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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 847)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 496

M. E. HEISER, PETITIONER,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 10, 1945.

CERTIORARI GRANTED DECEMBER 17, 1945.

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELLE WOODRUFF; and LEONARD J. WOODRUFF, APPELLANTS,

vs.

M. E. HEISER, APPELLEE.

No. 3053.

WILLIE MAE WOODRUFF, APPELLANT,

vs.

M. E. HEISER, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED SEPTEMBER 5, 1944.

VOLUME I.

INDEX.

	Original	Print
Proof of claim of Willie Mae Woodruff	3	1
Exhibit A—Statement of funds and property received by bankrupt as trustee for claimant	6	4
Proof of claim of M. E. Heiser	8	8
Exhibit A—Judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.	10	10

	Original	Print
Supplement to proof of claim of M. E. Heiser	11	11
Application of creditors for order directing trustee to attack judgment	21	20
Application of trustee for authority to employ counsel etc.	22	21
Bankrupt's statement with reference to claim of M. E. Heiser	24	23
Exhibits: (Complaints, etc. in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.)		
A—Complaint (by reference to page 45)		26
B—Judgment (by reference to page 10)		26
C—"Motion to set aside default and default judgment"	27-A	27
D—Order on motion to vacate judgment (by reference to page 70)		27
Order directing trustee to institute action to vacate and set aside judgment against bankrupt	28	28
Order staying bankruptcy proceedings	30	29
Objections to claim of Willie Mae Woodruff	33	31
Objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser	42	41
Exhibits:		
A—Judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 10)	10	45
B—Complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.	47	45
C—Certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al.	69	69
C-1—Order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.	66	70
D—Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al.	71	73
E—Writ of attachment and sheriff's return on execution, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al.	72	74
Objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser	76	77
Exhibits:		
A—Judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 10)		85
B—Complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 45)		85
C—Order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 70)		86

	Original	Print
D—Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al. (by reference to page 73)		86
E—Certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. (by reference to page 59)		86
Answer to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser	86	86
Answer to objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser	99	99
Amendments to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser	123	122
Amendments to objections of Ida Belle Woodruff to allowance of claim of M. E. Heiser	126	125
Order disallowing claim of M. E. Heiser	129	127
Order allowing claim of Willie Mae Woodruff	130	127
Petition for review of order disallowing claim of M. E. Heiser	131	128
Assignment of errors of M. E. Heiser	139	135
Petition for review of order allowing claim of Willie Mae Woodruff and assignments of error	146	141
Assignment of errors by M. E. Heiser	149	144
Referee's certificate on review as to claim of Willie Mae Woodruff	151	145
Referee's certificate on review as to claim of M. E. Heiser	154	148
Memorandum opinion	160	155
Judgment	167	160
Notice of appeal of Willie Mae Woodruff	169	162
Appeal bond (statement)		162
Notice of appeal of Leonard J. Woodruff et al.	171	162
Appeal bond (statement)		163
Statement of points on which appellants Willie Mae Woodruff et al. rely	178	163
Statement of points on which Willie Mae Woodruff relies	181	165
Designation of record on appeal by Willie Mae Woodruff	183	168
Application of Willie Mae Woodruff et al. for leave to prosecute appeal	185	169
Order permitting creditors to prosecute appeal	189	171
Order extending time for docketing cause	191	173
Letter, July 21, 1944, Geo. F. Clark, Referee, to John H. Pugh, Clerk, re transcript of hearings	193	173
Transcript of proceedings before referee in bankruptcy, November 15, 16, 18, 22 and 26, 1940	195	174
Heiser exhibits:		
A—Proof of claim of M. E. Heiser (by reference to page 8)		214
B—Supplement to proof of claim of M. E. Heiser (by reference to page 11)		214

	Original	Print
C to T, complaint etc. all filed in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.)		
C Complaint for damages (by reference to page 45)		214
D Summons etc.		214
E Affidavit, praecipe and entry of default		218
F Judgment (by reference to page 10)		219
G Notice of motion to set aside default and judgment		219
Motion to set aside default and default judgment		220
H Affidavit of Robert L. Beveridge		221
I Reply in opposition to defendant Woodruff's additional points and authorities on motion to set aside default		227
Affidavit of M. E. Heiser		229
Affidavit of Paul M. Joseph		251
J Minute order, June 8, 1939		263
K Clerk's minutes, June 12, 19, 22 and 23, 1939		266
L Clerk's minutes, June 27 and 28, 1939		271
M Minute order, June 29, 1939		274
N Notice of motion to vacate judgment etc.		275
O Affidavit of merits in support of motion to vacate judgment		278
P Affidavit of M. E. Heiser		281
Q Affidavit of Leonard J. Meyberg		284
R Clerk's minutes, September 26, 1939		285
S Notice of appeal		286
T Appellants' statement of points relied on		287
U Appellant's statement of points relied on case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser		289
V Opinion, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser		291
W Mandate, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser		295
Objectors' exhibits:		
1 Notice of unsecured property taxes etc. (by reference to page 1113)		297
2 Prospectus of Golden State Gem Company of Nevada		297
3 Letter, October 18, 1928, Heiser to Smith & Barstow		301
4 Affidavit of Francis B. Cobb, case No. 7623, In Re Leonard J. Woodruff, Bankrupt, United States District Court, Eastern District of Oklahoma		303
Exhibit A Affidavit of Francis B. Cobb in support of motion to set aside judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al.		305
Exhibit A Affidavit of Albert Le Quintree		307
Exhibit B Testimony of Jefferson James Grave		310

Original Print

Letter, November 14, 1928, Morrie Heiser to "Maudie & Will" 318

Exhibit B—Points and authorities in support of motion under rule 60B, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. 321

Exhibit C—Reporter's transcript of arguments on motion to vacate judgment and set aside default (by reference to page 987) 338

5—Certified copy of appellants' opening brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 1014) 339

6—Certified copy of appellee's brief in case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 1015) 339

7—Certified copy of appellants' closing brief in case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 1015) 339

8—Certified copy of transcript of record, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 1013) 339

Transcript of proceedings before referee in bankruptcy (Willie Mae Woodruff claim):

Testimony of Willie Mae Woodruff 261 391

Further testimony of Willie Mae Woodruff 455 479

Testimony of Leonard J. Woodruff 462 489

Willie Mae Woodruff exhibits:

1—General warranty deed, October 7, 1919, Leonard J. Woodruff to Wille May Woodruff 482

2—Statement from Carter Oil Company of Willie May Woodruff's interest in oil and gas run 485

3—Statement, May 13, 1920, Drake, Riley & Thomas to Leonard Woodruff re purchase of bonds for Wille May Woodruff 487

4—Check, May 13, 1920, $4484.25, Wille May Woodruff to Drake, Riley & Thomas 487

5—Draft, March 15, 1920, $25,000.00, Wille May Woodruff to First National Bank of Los Angeles on Guaranty State Bank of Ardmore, Oklahoma 488

6—Proof of claim of Willie Mae Woodruff (by reference to page 1) 488

7—Checks, July 13, July 22, September 14, October 25, November 13 and December 13, 1920, Wille May Woodruff to Leonard Woodruff 488

8—Check, July 13, 1920, $8,657.47, Wille May Woodruff to Drake, Riley & Thomas 490

8-A—Statement, July 20, 1920, Drake, Riley & Thomas to Leonard Woodruff 491

9—Check, July 22, 1920, $10,384.23, Wille May Woodruff to Drake, Riley & Thomas 492

	Original	Print
10—Check, October 2, 1920, $2452.92, Wille May Woodruff to Drake, Riley & Thomas		492
10-A—Statement, October 2, 1920, Drake, Riley & Thomas to Leonard Woodruff		492
11—Check, September 28, 1920, $5,114.44, Wille May Woodruff to Drake, Riley & Thomas		493
11-A—Statement, September 28, 1920, Drake, Riley & Thomas to Leonard Woodruff		493
12—Check, April 26, 1920, $458.68, Wille May Woodruff to Drake, Riley & Thomas		494
12-A—Statement, April 26, 1920, Drake, Riley & Thomas to Leonard Woodruff		494
13—Check, May 13, 1920, $3134.59, Wille May Woodruff to Drake, Riley & Thomas		495
13-A—Statement, May 13, 1920, Drake, Riley & Thomas to Leonard Woodruff		495
14—Check, September 7, 1920, $6240.70, Wille May Woodruff to Drake, Riley & Thomas		496
14-A—Statement, September 7, 1920, Drake, Riley & Thomas to Leonard Woodruff		496
15—Check, December 13, 1920, $15,980.63, Wille May Woodruff to Drake, Riley & Thomas		497
16—Statement, February 4, 1921, Drake, Riley & Thomas to Leonard Woodruff		497
17—Check, April 12, 1920, $9,149.46, Wille May Woodruff to Drake, Riley & Thomas		499
17-A—Statement, April 10, 1920, Drake, Riley & Thomas to Leonard Woodruff		500
18—Check, April 16, 1920, $8691.68, Wille May Woodruff to Drake, Riley & Thomas and statement of Drake, Riley & Thomas, April 15, 1920		500
19—Check, June 8, 1920, $1816.22, Wille May Woodruff to Drake, Riley & Thomas		501
20—Statement, July 22, 1920, Drake, Riley & Thomas to Leonard Woodruff		502
21—Check, July 2, 1920, $350.00, Wille May Woodruff to Drake, Riley & Thomas		502
22—Receipt, January 3, 1931, $5001.20, Security-First National Bank of Los Angeles to Wille May Woodruff		503
23—Receipt, April 23, 1931, A. O. Slaughter, Anderson & Fox for securities received from Leonard Woodruff		503
24—Check, May 16, 1931, $5,000.00, Wille May Woodruff to A. O. Slaughter, Anderson & Fox		504
25—Receipt, January 26, 1933, A. O. Slaughter, Anderson & Fox for securities received from Leonard Woodruff		504
26—Receipt, First National Bank of Los Angeles to Wille May Woodruff, $25,000.00, for collection		505
27—Check, June 1, 1931, $2500.00, Wille May Woodruff to Slaughter, Anderson & Fox		505
27-A—Receipt, June 1, 1931, $2500.00, Anderson & Fox		506

	Original	Print
28—Check, May 18, 1931, $5,000.00, Wille May Woodruff to A. O. Slaughter, Anderson & Fox		506
28-A—Receipt, May 19, 1931, Anderson & Fox to Wille May Woodruff, for credit account of Leonard Woodruff		507
29—Check, May 21, 1931, $12,500.00 Wille May Woodruff to Slaughter, Anderson & Fox		507
29-A—Receipt, $12,500.00, Anderson & Fox to Wille May Woodruff, for credit to account of Leonard Woodruff		508
30—Letter, July 22, 1922, First Securities Company, Los Angeles, California, to Willie May Woodruff		508
31—Receipt, March 7, 1923, $15,000.00 First Securities Co. to Wille May Woodruff		509
32—Draft, October 30, 1923, $14,000.00 to First National Bank of Los Angeles, California in favor of First National Bank of Klamath Falls, Oregon, signed Wille May Woodruff		510
33—Draft, October 29, 1923, $7500.00 to First National Bank of Los Angeles, California, in favor of First National Bank of Lakeview, Oregon, signed Wille May Woodruff		510
34—Draft, October 29, 1923, $1500.00, to First National Bank of Los Angeles, California, in favor of First National Bank of Lakeview, Oregon, signed Wille May Woodruff		511
35—Telegram, September 21, 1922, First National Bank of Los Angeles to Willie May Woodruff		512
36—Telegram, September 16, 1922, O. H. Schock to Leonard Woodruff		513
37—First National Bank of Los Angeles debit memorandum, September 21, 1922		513
38—Letter, February 24, 1922, First Securities Company, Los Angeles, California, to Willie May Woodruff		514
39—Checks, October 2, 1920; February 24, June 10, June 17, July 27, September 3 and October 10, 1921; December 2 and December 11, 1922; and May 31, 1924, signed Wille May Woodruff		515
40—Check, May 20, 1931, $15,000.00, Wille May Woodruff to Banks, Huntley & Co.		518
41—First National Bank of Los Angeles debit memorandum, October 14, 1921		519
42—Statement, August 1, 1922, First Securities Company to Leonard Woodruff		519
43—Check, May 18, 1921, $14,353.12, Wille May Woodruff to First National Bank of Los Angeles		520
44—Receipt, May 18, 1921, $14,358.55, First National Bank of Los Angeles to Willie May Woodruff		520
45—Receipted statement, May 18, 1921, $14,358.55, First National Bank of Los Angeles to Willie May Woodruff		521
46—Debit memorandum, First National Bank of Los Angeles, California, December 14, 1921		521

	Original	Print
46-A—Receipt, December 14, 1921, $9,709.69, First Securities Company to Mrs. Willie May Woodruff		522
46-B—Letter, December 9, 1921, Drake, Riley & Thomas to Leonard Woodruff		522
47—Check, March 18, 1921, $15,000.00, Wille May Woodruff to Drake, Riley & Thomas		523
47-A—Letter, March 22, 1921, Drake, Riley & Thomas to Leonard Woodruff		523
47-B—Statement, March 22, 1921, Drake, Riley & Thomas to Leonard Woodruff		524
48—Check, May 17, 1921, $10,198.92, Wille May Woodruff to Drake, Riley & Thomas		525
48-A—Receipt from Drake, Riley & Thomas for securities received from Wille May Woodruff		525
49-A—Receipt, October 31, 1921, $26,000.00, First Securities Company to First National Bank of Los Angeles		526
49-A—Receipt, October 31, 1921, $26,000.00, First National Bank of Los Angeles to Willie May Woodruff		526
49-B—Statement, October 31, 1921, First National Bank of Los Angeles in account with Willie Mae Woodruff		527
50—Letter, May 24, 1921, Drake, Riley & Thomas to Leonard Woodruff		527
51—Check, July 7, 1921, $12,745.00, Wille May Woodruff to Drake, Riley & Thomas		528
51-A—Statement, April 25, 1921, First National Bank of Los Angeles to Willie May Woodruff		528
52—Receipt, April 25, 1921, $3,057.00, First National Bank of Los Angeles to Willie May Woodruff		529
53 to 55—Checks, June 6, March 20, July 29, 1921, Willie May Woodruff to First National Bank of Los Angeles		529
56—Receipted statement, March 4, 1922, First Securities Company to Willie Mays Woodruff		530
57—Debit slip, June 19, 1922, First National Bank of Los Angeles, re Wille May Woodruff showing total charge of $20,651.67, receipt, etc		531
58—First National Bank of Los Angeles, debit memorandum, March 3, 1922		534
58-A—Receipt, March 3, 1922, $1,701.67, First Securities Company to Mrs. Willie Mae Woodruff		535
59—Purchase request, July 28, 1922, Leonard Woodruff to First Securities Company		536
60—Checks, December 29, 1924, July 27, 1925, April 12, 1926, and November 12, 1926, Wille May Woodruff to Leonard Woodruff, and check, December 3, 1926, Wille May Woodruff to Jack Tomas		537
61—First National Bank of Los Angeles debit memorandum, May 18, 1922		539
61-A—Statement, May 19, 1922, First Securities Company showing bonds purchased for Willie May Woodruff		540

61-B—Letter, May 18, 1922, First Securities Company to Mrs. Willie May Woodruff

62—Check, April 12, 1923, $8,984.64, Wille May Woodruff to Drake, Riley & Thomas

62-A—Statement, April 12, 1923, Drake, Riley & Thomas to Wille May Woodruff

62-B—Receipt, signed Leonard Woodruff re Pacific Gas and Electric Corporation bonds

63—Check, $64,000.00, Wille May Woodruff to First National Bank

64—Receipt, December 13, 1921, Drake, Riley & Thomas

65—Letter, February 9, 1925, First Securities Company to Mrs. Wille May Woodruff and statements, etc. in connection therewith

66—Letter, February 5, 1925, First Securities Company to Mrs. Leonard Woodward and statements etc. in connection therewith

67-68—Checks, February 28, 1924, and November 26, 1924, Wille May Woodruff to First National Bank

68—Check, May 13, 1924, $8,970.00, Wille May Woodruff to Drake, Riley & Thomas

69-A—Receipted statement, May 13, 1924, Drake, Riley & Thomas to Mrs. Willie May Woodruff

70—70-A—Check, April, 19, 1923, $19,880.00, Wille May Woodruff to First Securities Co., and invoice of First Securities Company for $19,880.00

71—71-A—Check, June 7, 1923, $15,500.00, Wille May Woodruff to First Securities Co., and invoice of First Securities Company

72—Check, June 16, 1922, $17,500.00, Wille May Woodruff to Drake, Riley & Thomas, and statement with reference thereto.

73—First National Bank of Los Angeles debit memorandum, September 29, 1924

74—Check, December 27, 1924, $4,871.67, Wille May Woodruff to First National Bank, L. A., and receipt of First Securities Company therefor

75—Check, November 7, 1924, $5,000.00, Wille May Woodruff to First National Bank of Los Angeles

76—Check, July 8, 1924, $10,326.40, Wille May Woodruff to First Security

77—Check, September 20, 1928, $14,552.61, Wille May Woodruff to Drake, Riley & Thomas

78—Debit slip, March 5, 1923, First National Bank of Los Angeles re Wille May Woodruff showing total charge of $26,500.00

78-A—Receipt, December 29, 1924, $14,181.76, First Securities Company to Wille May Woodruff

78-B—Debit slip, February 26, 1925, First National Bank of Los Angeles re Wille May Woodruff showing total charge of $15,000.00

	Original	Print
79—Receipt, December 5, 1936, $791.52, Tax Collector, Los Angeles County, California, to Leonard J. Woodruff		567
80—Receipt, December 5, 1936, $524.99, Tax Collector, Los Angeles County, California, to Leonard J. Woodruff		569
Transcript of proceedings before referee in bankruptcy, July 27, 1942:		
Proceedings preliminary to testimony	460	571
Testimony of Leonard Woodruff	466	575
Testimony of Leonard Woodruff (recalled)	560	642
Testimony of Willie Mae Woodruff	526	619
Testimony of Herman Woodruff	535	625
Testimony of H. D. McCollom	541	630
Testimony of P. M. Jackson	548	635
Testimony of Rupert B. Turnbull	560	643

VOLUME II.

Objectors' exhibits (designated portions):		
AA—Portion of judgment docket, No. 13393-J, Bankruptcy, United States District Court, Southern District of California, In Re Golden State Gem Company, and proceedings, March 20, 1939, in No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.		649
BB—Depositions:		
Cobb, Francis B. (narrative statement)	573	655
Cone, Claire E. (narrative statement)	585	667
Objectors' exhibit 1—Reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems (by reference to page 1169)		673
Dewing, H. A. (narrative statement)	569	661
Dewing, H. A. (narrative statement) (recalled)	578	661
Objectors' exhibit 1—Reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 987)		679
Objectors' exhibit 2—Designated portions of reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 1120)		680
Dunn, Norman R. (narrative statement)	583	665

	Original	Print
Objectors' exhibits:		
1—Freight bill, Pacific Electric Railway Company, August 13, 1928, to Morrie Heiser		681
2-1—Receipt for delivered freight August 16, 1928, Morrie Heiser to Pacific Electric Railway Company		683
2-2 to 2-33—Checks of Golden State Gem Co.		685
2-34 and 2-35—Ledger sheets showing account of Golden State Gem Co. of Nevada with United States National Bank, Los Angeles, California		703
2-36 and 2-37—Summons to witness, No. 13393, Bankruptcy, United States District Court, Southern District of California, in re Golden State Gem Company		707
2-38—Writ of attachment, Municipal Court, City of Los Angeles, California, Mill v. Golden State Gem Co. et al.		710
Graves, Jefferson J. (narrative statement)	589	671
Objectors' exhibit 1—Letter, August 30, 1928, Morrie Heiser to James Jefferson Graves	591	673
Kosto, Gean (narrative statement)	579	661
Lobree, E. A. (narrative statement)	595	677
Marlatt, Charles B. (narrative statement)	582	664
Objectors' exhibits:		
1—Colyear Van and Storage Co. checking list		713
2—Warehouse receipt and contract of Colyear Van and Storage Co.		715
3—Letter, June 28, 1933, Francis B. Cobb to Colyear Van and Storage Co.		717
McClain, C. W. (narrative statement)	570	652
Moran, John Greble (narrative statement)	577	659
Olson, C. N. (narrative statement)	569	650
Objectors' exhibit 1—Designated portions of reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company (by reference to page 1046)		717
Oreck, Louis (narrative statement)	584	666
Seelye, J. A. (narrative statement)	571	652
Objectors' exhibits 1-A and 1-B—Writ of attachment No. 246-469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Bank Co. et al.		718

	Original	Print
Objectors' exhibits 2-A to 2-C—Ledger sheets showing account of Australian American Gem Mining Company in United States National Bank, Los Angeles, California		721
Stern, D. K. (narrative statement)	587	660
Woodruff, Howard L. (narrative statement)	581	662
Deposition of M. E. Heiser (objections, arguments and colloquy omitted)		727
Objectors' exhibits:		
1—Pages 30, 31 and 32 of catalog showing exhibitors in Australian Pavilion		925
2—Letter, August 26, 1941, Mr. Samuels to Mr. Meyberg		931
3—Letter, April 14, 1927, M. E. Heiser to Maud James, Loller		933
4—Original bill of lading, August 9, 1928 (by reference to page 1117)		937
5—Receipt for freight delivered, August 13, 1928, Morrie Heiser to Pacific Electric Company (by reference to page 683)		937
6—Five certificates of Golden State Gem Company to Morris Heiser, Nos. 10 to 14		937
7—Check $350.00, September 21, 1928, Golden State Gem Co. to M. E. Heiser		943
8—Deposit slip, July 9, 1928, $3,205.00, Australian American Gem Mining Co.		945
9—Signature authorization card of United States National Bank of Los Angeles, July 21, 1928		945
10—Letter, October 18, 1928, Morrie Heiser to Mr. Calvin Smith and Mr. Barstow (by reference to page 301)		947
11—Letter, October 11, 1929, M. E. Heiser to "Dear Jeff & Mr. Lequarrie"		947
12—Letter, November 14, 1928, Morrie Heiser to "My dear Maudie & Will"		948
13—Letter, October 9, 1929, M. E. Heiser to M. Le Quentrie		953
14—Photostatic copy of signature card of Walter Calvin Smith, August 16, 1928		953
15—Deposit slip of Golden State Gem Co., August 16, 1928		955
Deposition of Dr. B. Edward		957
Deposition of A. A. Staines		961

	Original	Print
Entries appearing in book forming part of records of Department of Mines of the Government of Queensland		968
—Deposition of Leo J. Jones		976
Photograph of gold and gemstone display of Australian Pavilion Panama-Pacific International Exposition		985
CC—Reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.		987
DD—Certified copy of transcript of record, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (statement)		1013
EE—Titles of subjects discussed in certified copy of appellants' opening brief, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. M. E. Heiser		1014
FF—Titles of subjects discussed in certified copy of appellee's brief, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. M. E. Heiser		1015
GG—Titles of subjects discussed in certified copy of appellants' closing brief, No. 9256, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser		1015
HH—Certain proceedings in case No. 275663, Superior Court, Los Angeles County, California, Adolph Kosches etc. v. Golden State Gem Co.		1016
Complaint		1018
Summons etc.		1020
Default judgment		1021
Affidavit for attachment		
II—Certain proceedings in case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al.		1022
Complaint		1027
Summons etc.		
Default judgment (by reference to page 73)		1029
Execution		
Writ of attachment and returns (statement)		1032
Memorandum of costs and disbursements (excerpts)		1033
JJ—Promissory notes, $500.00, Golden State Gem Co. and Leonard Woodruff to Alphonse Jeddis Company		1034
KK—Complaint, judgment, execution and return, case Nos. 285037, Superior Court, Los Angeles County, California, Alphonse Jeddis et al. v. Golden State Gem Co.		1035

	Original	Print
LL—Complaint, case No. 5587-J, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1040
MM—Order re motion to vacate judgment, case No. 5587-J, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1043
NN—Reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company, April 14, 1932, and April 22, 1932		1046
OO—Deposition of M. E. Heiser, amended answer, and judgment, case No. 238348, Superior Court, San Francisco County, California, Heiser v. Graves		1075
PP—Application for leave to sell and issue stock etc. in re International Gems before Commissioner of Corporations, State of California		1108
QQ—Notice of unsecured property taxes etc.		1113
RR—Reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1120
RR-2—Reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems		1169
SS—Articles of incorporation of Golden State Gem Company of Nevada		1174
TT—Designation of representative in the State of California upon whom process against Golden State Gem Company of Nevada may be served		1184
UU—Excerpt from list of persons holding shares in Heiser Burmah Sapphires, Limited		1185
VV—Order fixing date for hearing of objections to claim of M. E. Heiser etc., case No. 13393-J, United States District Court, Southern District of California, In the Matter of Golden State Gem Company, bankrupt		1187
WW—Certificate in re claim of M. E. Heiser, case No. 13393-J, United States District Court, Southern District of California, In the Matter of Golden State Gem Company, bankrupt		1189
YY—Certain proceedings in case No. 7426, Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.:		1190
Complaint for injunctive relief		1190

	Original	Print
Exhibits:		
1—Application of creditors for order directing trustee to attack judgment, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 20)	1206	
2—Application of trustee for authority to employ counsel etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 21)	1207	
3—Order directing trustee to institute legal action etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 28)	1207	
4—Opinion, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 291)	1207	
Affidavit of Leonard J. Meyberg in support of application for temporary restraining order	1207	
Answer of Leonard J. Woodruff	1211	
Exhibit A—Order staying bankruptcy proceedings, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 29)	1224	
Exhibit B—Motion of Leonard Woodruff to set aside default and default judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 220)	1224	
Exhibit C—Objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser (by reference to page 77)	1224	
Exhibits:		
A—Judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 10)	1224	
B—Complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 45)	1224	

	Original	Print
C—Order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 70)		1223
D—Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al. (by reference to page 53)		1224
E—Certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. (by reference to page 69)		1224
Exhibit D—Stipulation re taking of depositions etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt		1225
Exhibit E—Letter, December 5, 1940, Champion & Fischl to Rupert B. Turnbull		1226
Exhibit F—Telegram, December 6, 1940, Turnbull to Champion & Fischl		1227
Temporary injunction, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1228
Findings of fact and conclusions of law, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1230
Judgment, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1236
Clerk's certificate	601	1237

Proceedings in the United States Circuit Court of Appeals.

Order of submission	1239
Opinion	1239
Judgment	1246
Petition for rehearing	1249
Order denying petition for rehearing	1303
Order staying mandate	1303
Clerk's certificate	1303
Order allowing certiorari	1305

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE EUGENE RICE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

In the Matter of

LEONARD J. WOODRUFF, BANKRUPT.

No. 7623—Civil.

Proof of Claim of Willie Mae Woodruff.

3 At Los Angeles, in the Southern District of California on the 12th day of July, 1939, came Willie Mae Woodruff and made oath and says:

That the said Leonard J. Woodruff, the person for whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is, justly and truly indebted to said claimant, in approximately the sum of Four Hundred Twenty Two Thousand Seven Hundred Twenty Eight Dollars and 58/100 ($422,728.58); that the consideration of said debt is as follows:

That the said claimant and the said bankrupt are and at all times herein mentioned were husband and wife, and that at diverse times since the said marriage of the said claimant and the said bankrupt, your said claimant has received by gift, bequest and devise, sums of money and property aggregating about the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) the exact sum of which your claimant cannot state, and that all of said moneys and property by reason of gift, bequeath or devise, became and were and now are the separate property of your said claimant.

That with the consent and acquiescence of your said claimant, the said bankrupt received moneys, stocks, bonds, and property so belonging to your claimant as her separate property, and by her acquiescence and consent, from time to time invested and reinvested same in diverse investments in his own name, and at all such times it was understood and agreed by and between claimant and her husband, the bankrupt, that the said bankrupt should receive the whole of all such

moneys, stocks, bonds and property in which the same might be invested in trust for her use and benefit.

That by the use and investment of said moneys, stocks, bonds, and property, the said bankrupt as Trustee of said claimant received rents, issues, and profits therefrom and the proceeds thereof and received all of such rents, issues, and profits and proceeds therefrom as Trustee for your said claimant and in trust for her as her separate property:

4 That the said bankrupt received large sums of money from the said trust property so held by him in the way of rents, issues, profits, and dividends, and had never rendered any accounting to your claimant therefor nor has he rendered any accounting to your claimant of the various properties acquired by him for her use and benefit as her Trustee and the said claimant charges upon her own information and belief that there is a large sum of money due from the said bankrupt as her said Trustee arising out of her said sums aforesaid, the exact amount of which said money is unknown at this time to your claimant; but that your claimant alleges, on information and belief that said sum so due from the said bankrupt to your said claimant is at least the sum of Four Hundred Twenty Two Thousand Seven Hundred Twenty Eight Dollars and 58/100 ($422,728.58), which includes interest thereon, which said sum as aforesaid has been arrived at by your claimant from facts and instruments in her hands and her possession, a computation thereof having been made a copy of which is hereto attached and marked Exhibit "A"; and that your claimant hereby demands that the said bankrupt or his Trustee thereof be required to render an account of the said Trusteeship showing the sums of money which had been received by him, and that the claimant be permitted hereinafter to amend her claim as hereinbefore set forth so as to include therein such sums of money as may be determined due and owing to her as a result of the said trust.

That no part of the said claim or debt as hereinbefore set forth has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; and that said claimant has not, nor has any other person by claimants order, or to the

knowledge or belief of deponent, or for claimant, had or received any manner of security whatever for said debts.

That no accounting or demand therefor has ever been had by and between said claimant and said bankrupt, nor has the said bankrupt ever denied or refused to account to your claimant under his said trust.

Said claimant hereby constitutes and appoints Mark S. Feiler and or W. W. Potter claimant's true and lawful attorney in fact to represent said claimant, in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustee of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

WILLIE MAE WOODRUFF, Individual.

Subscribed and sworn to before me this 12th day of July, A. D. 1939, and also acknowledged on this date by the subscriber, who is personally known to me. Florence Feiler, Notary Public in and for the County of Los Angeles, State of California. My commission expires Nov. 8, 1941.

Filed July 20, 1939. George F. Clark, Referee.

Exhibit A.

Statement of Funds and Property Received by Bankrupt as Trustee for Claimant.

			Amount	Accrued Interest
1.	May 13, 1920	U. S. Government Third Liberty Loan 4¼s.	$5,000.00	$3,150.00
2.	Mar. 15, 1920	Draft on 1st National Bank, Los Angeles, California	25,000.00	33,250.00
3.	July 2, 1920	Check on 1st National Bank, Los Angeles, California	350.00	428.00
4.	July 13, 1920	Check on 1st National Bank Los Angeles, California	5,300.00	4,049.00
5.	July 20, 1920	U. S. Government Third Liberty Loan 4¼s	10,000.00	6,300.00
6.	July 22, 1920	Check on 1st National Bank Los Angeles, California	400.00	532.00
7.	Sep. 14, 1920	Check on 1st National Bank, Los Angeles, California	300.00	399.00
8.	Sep. 28, 1920	Check on 1st National Bank, Los Angeles, California	725.00	964.00
8a.	Oct. 25, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles,	2,376.00	3,659.04
8b.	Nov. 13, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	960.00	$1,463.00
8c.	Dec. 13, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	250.00	380.50
8d.	Feb. 24, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	300.00	378.00

8e.	June	10, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	200.00	252.00
8f.	June	17, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	2,500.00	2,870.00
8g.	July	27, 1921	Check to Leonard Woodruff, 1st Nat'l Bank Los Angeles	300.00	377.00
8h.	Sep.	3, 1921	Check to Leonard Woodruff, Citizens Trust	300.00	357.00
8i.	Oct.	10, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	16,587.50	20,320.53
9.	Feb.	24, 1922	Chicago, Burlington & Quincy Railroad Bonds	14,000.00	16,960.00
10.	Dec.	2, 1922	Check on 1st National Bank, Los Angeles, California	5,000.00	2,000.00
10a.	Dec.	11, 1922	Check on 1st National Bank to Leonard Woodruff	10,750.00	13,169.25
11.	Sep.	16, 1922	Transfer of credit in 1st Nat'l Bank, Los Angeles	30,000.00	35,700.00
12.	Dec.	19, 1922	Memorandum of check on 1st Nat'l Bank, Los Angeles	3,425.00	4,070.00
13.	July	22, 1922	New York Central Railroad Bonds	15,000.00	17,000.00
14.	Oct.	29, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	7,500.00	5,600.00
15.	Oct.	29, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	1,500.00	1,680.00

			Amount	Accrued Interest
16.	Oct 30, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	14,000.00	15,680.00
17.	May 31, 1924	Check on 1st Nat'l Bank Los Angeles	1,000.00	1,050.00
18.	May 29, 1924	To debit in account 1st Securities Company	861.77	873.00
18a.	Jan. 3, 1931	Transfer of funds from Security 1st Nat'l Bank	5,001.20	2,975.56
		Brought for'd	$178,826.47	$195,886.88
Continued:				
19.	Apr. 23, 1931	Chicago, Burlington Railway Stock	21,000.00	11,760.00
20.	May 16, 1931	To Slaughter, Anderson and Fox for stock	5,000.00	2,800.00
21.	May 18, 1931	To Slaughter, Anderson and Fox for stock	5,000.00	2,800.00
22.	May 21, 1931	To Slaughter, Anderson and Fox for stock	12,500.00	7,000.00
23.	May 30, 1931	To banks, Huntley and Co. for stock	15,000.00	12,400.00
24.	June 1, 1931	To Slaughter, Anderson and Fox for stock	2,500.00	1,400.00
25.	December 1931	State of Utah Bonds (5 at $5,000.00)	25,000.00	15,000.00

26.	June 13, 1934	Money Order to Leonard J. Woodruff	100.00	35.00
27.	July 7, 1934	Paid to Burnett Wolfson for Leonard J. Woodruff	200.00	56.23
28.	A bloc, of 15,000 shares of Pacific Gas and Electric Company stock, the value of which is unknown at this time.			
29.	165 shares of Security 1st National Bank Stock		5,464.00	
			$270,590.47	$249,138.11

Recapitulation.

Principal due	270,590.47
Accrued Interest	249,138.11
Total	$519,728.58

Received on account of the above indebtedness, by the sale to me on December 28, 1934, of lot situated at the Southwest corner of Alvar Street and Hollywood Boulevard, Los Angeles, California, at a valuation of $95,000.00	$95,000.00	
Received in cash on December 3, 1935	2,000.00	
	$97,000.00	
		97,000.00
Balance due		$422,728.58

Proof of Unsecured Debt. [M. E. Heiser.]
(Form 31)

8 At Los Angeles, in said Southern District of California on the 14th day of July, A. D. 1939, came M. E. Heiser, of San Francisco, in the County of San Francisco and State of California, in said District, and made oath and says:

That the said Leonard J. Woodruff, the person by whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said deponent in the sum of Two Hundred Seventy Eight Thousand Six Hundred Thirty-one and 71/100 ($278,631.71) Dollars; that the consideration of said debt is as follows: Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $164,000.00, by false pretenses and false representations through *wilfull*, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon, at the rate of 7% per annum, amounting to $113,036.71 and costs of $1595.00 fixed and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein as plaintiff and against Leonard Woodruff, bankrupt herein as defendant, certified copy of which judgment of said United States Court is marked Exhibit "A" is hereto annexed and referred to as a part hereof; that no part of said debt has been paid; no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no set-offs or counter-claims to the same and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where the said debt was contracted.

M. E. HEISER, Creditor.

Subscribed and sworn to before me this 14th day of July,

1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal).

Letter of Attorney.

To Leonard J. Meyberg and or Rupert B. Turnbull:

I, M. E. Heiser, the claimant mentioned in the foregoing claim, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent to such appointment of truste; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In Witness Whereof, I have hereunto signed my name and affixed my seal the 14th day of July, A. D. 1939.

M. E. HEISER.

Signed, sealed and delivered in the Presence of: Signed: Paul Joseph. Acknowledged before me, this 14th day of July, 1939. Paul Joseph, Notary Public in and for said County and State. My commission expires July 6, 1940. (Seal).

Filed July 20, 1939. Geo. F. Clark, Referee.

Exhibit A

In the District Court of the United States, Southern Division of California, Central Division.

M. E. Heiser, Plaintiff, v. Leonard Woodruff et al, Defendants. No. 7256-C.

Judgment.

In this action the defendant Leonard Woodruff having been regularly served with process and having failed to appear, plead or otherwise defend, and the default of the said defendant Leonard Woodruff having been entered, and upon application of plaintiff the matter having been brought before the court for hearing, the Honorable Geo. Cosgrave presiding, and evidence having been introduced in open session of this court on the 20th day of March, 1939, and the court being fully advised in the premises.

On motion of the plaintiff it is therefore hereby considered adjudged and decreed by the court that plaintiff M. E. Heiser herein recover of and from defendant Leonard Woodruff the sum of $164,000.00, together with $113,036.71 as interest thereon, at the rate of 7% per annum from and after the 13th day of May, 1929, total of $277,036.71, with the costs of this suit, for the collection of which said sum and costs execution is hereby awarded. Cost taxed at $1595.00.

Done in open court this 20th day of March, 1939.

GEO. COSGROVE, District Judge.

Judgment entered Mar. 20, 1939. Docketed Mar. 20, 1939. Book CO 1, Page 574. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy. (Seal).

Endorsed: Filed Mar. 20, 1939. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy Clerk.

Supplement to Proof of Claim of M. E. Heiser.

11 Comes now M. E. Heiser, a creditor, and by this petition would show:

I.

That heretofore in and about July 1939 your petitioner herein filed in the above entitled matter his creditor's claim and proof of debt amounting to $278,631.71. That said claim had prior to the said time been reduced to judgment in favor of claimant and against the bankrupt herein by a judgment duly made, given, rendered, and entered in the District Court of the United States for the Southern District of California, Central Division. That at said time said judgment was final.

II.

That prior to the time when said judgment became final the said bankrupt herein did on or about the 10th day of April, 1939, make a motion in the said court in which the said judgment was rendered for order of said court to vacate and set aside the said judgment; and the parties, including the said bankrupt, having appeared before the said court at a hearing on the said motion, and the matter having been submitted, the same was thereupon denied by order of the said court, duly and regularly made and filed in said action. That said order has become final.

III.

That thereafter on or about the 23d day of August, 1939, P. M. Jackson, as the duly and regularly appointed, qualified and acting trustee in bankruptcy for the Estate of Leonard J. Woodruff, bankrupt, elected to contest and attack said claim, and the judgment of M. E. Heiser against the said Leonard J. Woodruff, bankrupt, upon which it is predicated, and then and there elected the manner in which he desired to attack and contest the same, and the Court wherein he desired to commence the same.

Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson as said Trustee herein presented to this Honorable Court in Bankruptcy his applica-

12 tion for authority and direction to institute in the court where said judgment was rendered, legal action to vacate, set aside and invalidate the said judgment and claim of the said M. E. Heiser against the said bankrupt herein, and for authority to employ counsel to represent him and the bankrupt in said litigation; that on the said day, according to the order of the Court on file herein, there also was filed an application of creditors, other than the said M. E. Heiser, requesting that the said above entitled Court direct the said Trustee to take the said legal steps; that the above entitled Bankruptcy Court, after being fully advised in the matter, approved the said application and election of the said trustee in bankruptcy to contest the said claim and judgment of the said M. E. Heiser. That the above entitled Court then and there made its order directing that the said trustee do so in the court that rendered the said judgment, to-wit: District Court of the United States, Southern District of California, Central Division.

That in said order on file herein the above entitled Bankruptcy Court found that the litigation necessary to test said judgment should be conducted in the State of California where the said judgment was rendered; that in said order on file herein this Honorable Court "further ordered, adjudged, and decreed" "that the trustee P. M. Jackson, be and is hereby authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside and to void the judgment of M. E. Heiser against the bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, said case being No. 7256-C in said Court," and this Honorable Court further ordered "that said trustee be authorized to employ as his counsel in this matter Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelly, of Los Angeles, California." That reference is made to the said order of the above entitled Court in Bankruptcy on file herein.

IV.

That in pursuance of the said Order of this Honorable Bankruptcy Court and its authorization and direction, and in pursuance of his election of the manner and place in

which he desired to contest the said claim of said M. E. Heiser against the said bankrupt, the said trustee
14 P. M. Jackson did employ the services of the said Francis B. Cobb of Los Angeles, California, as his attorney and did pursuant thereto on or about September 11th, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, invalidate and void the claim and judgment of M. E. Heiser against the said bankrupt Leonard J. Woodruff; that in behalf of the bankrupt Leonard J. Woodruff counsel was employed and joined in said petition; that in the said petition and action and proceeding filed by the said trustee herein and joined in by the said Leonard J. Woodruff, bankrupt herein, the said trustee P. M. Jackson claimed, asserted and averred: That the said Court was without jurisdiction as to the defendant Woodruff to enter the said judgment, in that the said trustee herein claimed summons was not properly served; that the Court did not have jurisdiction of the person of the judgment debtor; that the judgment was prematurely entered; that the complaint is defective; that the complaint was barred by laches; that the complaint was barred by the Statute of Limitations; that a fraud was practiced upon the Court with respect to the entry of said judgment was void as against the said trustee in bankruptcy under Section 67 (d) as amended; that the said complaint does not state a cause of action against the said bankrupt Leonard J. Woodruff; that the court erred in opening the case after judgment for the limited purpose of ascertaining values of the property involved to the exclusion of all other offenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and P. M. Jackson, trustee in bankruptcy for the Estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged causes of action and have been prevented from presenting said defense by reason of fraud, accident, surprise and excusable neglect.

That in said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors have no right or privilege of defending or intervening in respect to said judgment, which judgment, said trustee averred he

was informed and believed was based upon fictitious values and was obtained by methods which amount to constructive frauds upon other creditors, and upon him as trustee as the representative of said other creditors; that none of the creditors of the said bankrupt knew prior to the entry of the said judgment that the alleged process had been served: that if the petition of the said trustee be granted he believes, and has been advised by his attorneys that the said claim of M. E. Heiser can be defeated in whole and the creditors of this estate will then receive a larger percentage of their claims; that the judgment entered in the within mentioned case in favor of M. E. Heiser and against Leonard J. Woodruff is in the sum of $278,631.71, plus costs and that the other claims against the above entitled estate, so far as known to the said trustee herein, are approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of said M. E. Heiser is permitted to stand and if the same is without merit, in that the assets of the estate, so far as known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00, and the known claims, including that of the said M. E. Heiser, claimant herein, approximately near one million one hundred thousand dollars; that the said M. E. Heiser, claimant herein, will receive approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors. That in said proceeding the said P. M. Jackson, trustee in said proceeding, further averred under oath:

"Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors, and your affiant (P. M. Jackson, Trustee) as representative of said creditors, and in the event said judgment is set aside the alleged claim of the said M. E. Heiser can be defeated in whole."

An answer by the claimant M. E. Heiser and also by his attorney was filed to the said petitions of the said trustee

herein and of the said Leonard J. Woodruff, bankrupt. That thereafter the trial and hearing on the said petition and cause instituted by the said trustee came before the said Court on the 26th day of September, 1939, the said trustee appearing by his counsel, Francis B. Cobb, and the said bankrupt, Leonard Woodruff, appearing by his counsel, and certain creditors of the bankrupt estate herein appearing by their counsel, and your petitioner herein, M. E. Heiser, appearing by his counsel, and evidence was introduced, that the matter having been argued by the said counsel, and submitted, the said Court rendered judgment in favor of your claimant herein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson, and against the said bankrupt, Leonard Woodruff.

V.

That thereafter on or about the 29th day of September, 1939, the said P. M. Jackson, trustee in bankruptcy herein, appearing by Francis B. Cobb, his attorney, and the said Leonard J. Woodruff, bankrupt herein, appearing by Edward Fitzpatrick and Cobb, Campbell & Kelley his attorneys, being dissatisfied with the said decision, filed an appeal from the said judgment of the District Court of the United States for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District pursuant to Rule 73, subdivisions (a) and (b) of the Rules of Civil Procedure and Judicial Code Sec. 128 (a), 28 U.S.C.A. 225 (a); Rules of Civil Procedure for District Courts, Rule 55 (a), (b) (2), 28 U.S.C.A. following Section 723c; that briefs were submitted by the said trustee herein and the said Leonard J. Woodruff, bankrupt, as appellants, and claimant Heiser, herein as appellee.

That the said matter came on regularly for hearing before the said United States Circuit Court of Appeals for the Ninth Circuit, and after argument of counsel for the said parties the same was submitted for decision. That thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit made and filed its decision and order affirming the said judgment; that a certified printed copy of the said decision and opinion of the United States Circuit Court of

Appeals for the Ninth Circuit, as furnished by the Clerk of the said court, is attached hereto and marked Exhibit A, and by this reference is made a part hereof. That said opinion and decision is reported in 111 F. 2d 310. That on or about the 31st day of May, 1940, the said United States Circuit Court of Appeals issued its mandate pursuant to the said decision, and the same was duly and regularly filed in said court.

17 That in the matter of Jackson and Woodruff vs. Heiser, No. 9356 in the Circuit Court of Appeals in and for the Ninth Circuit, the appeal instituted by the said P. M. Jackson, trustee herein, and the bankrupt herein, Leonard J. Woodruff, from the decision of the said United States District Court for the Southern District of California, Central Division, in favor of M. E. Heiser, claimant herein, and against the said P. M. Jackson, trustee, and the said bankrupt in the proceeding commenced by the said P. M. Jackson, trustee, and joined in by the said Leonard J. Woodruff, bankrupt herein, in the said District Court for the Southern District of California, the said United States Circuit Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things that, to wit:

1. The action of the trustee and the said Leonard J. Woodruff, bankrupt, in the United States District Court for the Southern District of California, was in effect an independent action or proceeding; that as such the decision rendered therein was a final decision within the meaning of 128 (a) Judicial Code, 28 U.S.C.A. 225 (a), and was therefore appealable.

2. (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition the defendant Woodruff appeared in the said action and participated therein, waived service and voluntarily submitted himself to the jurisdiction of the said court.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. Complaint did state a cause of action.

7. Complaint was not otherwise defective.

8. Complaint did not show that the action was barred.

9. Neither the trustee Jackson nor the bankrupt Woodruff were prevented from presenting defense by reason of fraud, accident, surprise or excusable neglect.

10. That there was no abuse of its discretion by the Court.

11. That the Court did not err.

12. That the order of the District Court for the Southern District of California is affirmed, which order denied the attack upon the said judgment and claim, in the proceeding commenced in the said court by the said trustee P. M. Jackson, and joined in by the said bankrupt Leonard J. Woodruff and decided in favor of said claimant M. E. Heiser.

VI.

That no motion for rehearing of the said cause has been filed in the United States Circuit Court of Appeal in the Ninth Circuit and that time, for the filing of same has expired. That no appeal has been taken from the said judgment of the said United States Circuit Court of Appeals for the Ninth Circuit and no writ obtained from the Supreme Court of the United States in the said cause. That time within which to have the said cause reviewed in the Supreme Court of the United States has expired. That the said judgment of the said District Court of the United States for the Southern District of California in favor of M. E. Heiser, claimant herein, and against Leonard J. Woodruff, bankrupt herein, in the amount of $278,031.71 has become final.

That the decision of the District Court of the United States for the Southern District of California in favor of claimant herein, M. E. Heiser, and against P. M. Jackson, trustee herein, and Leonard J. Woodruff, bankrupt herein, upon the said action or proceeding instituted and filed in said court by P. M. Jackson, trustee herein, pursuant to

his election and the order of the above entitled Court in Bankruptcy to vacate, set aside, invalidate and void said judgment, has become final.

VII.

That the said trustee P. M. Jackson, with the authority and instruction of the Bankruptcy Court herein, elected to and did contest and attack the said claim and judgment of M. E. Heiser herein in the court that rendered the said judgment, the District Court of the United States, for the Southern District of California, Central Division; that the result of said contest and attack was a decision in favor of M. E. Heiser and against the said trustee herein, which decision was appealed by the said trustee to the
19 United States Circuit Court of Appeals for the Ninth Circuit, and by said Court affirmed. That said decision is final. That said decison is res adjudicata as to the contents of said judgment for $278,634.71 filed herein and as to the claim of said M. E. Heiser, and as to the creditors herein, the trustee herein, and the bankrupt.

VIII.

That the present address of your claimant is, M. E. Heiser, 566-47th Avenue, San Francisco, California, and the name and address of your claimant's attorneys is, M. S. Meyberg and Leonard J. Meyberg, 403 Lane Mortgage Building, 208 West Eighth Street, Los Angeles. That claimant M. E. Heiser hereby revokes all previous letters and powers of attorney and attaches hereto Letter of Attorney to the said M. S. Meyberg and Leonard J. Meyberg duly executed. That the foregoing revocation is made with the knowledge and consent of the attorneys to whom said previous letters were directed.

Wherfore, your petitioner, claimant and creditor herein asks this Honorable Court to allow the filing of this petition as supplement to his proof of debt and claim on file herein to be attached thereto and become a part thereof.

Signed: M. E. Heiser, Petitioner

Subscribed and sworn to before me this 31st day of July, 1940. Paul Joseph, Notary Public in and for the

County of Los Angeles, State of California. My commission expires July 2, 1944.

M. S. MEYBERG and LEONARD J. MEYBERG
by: M. S. MEYBERG, Attorneys for petitioner.
M. E. Heiser.

Filed Aug. 5, 1940. Geo. F. Clark, Referee.

Letter of Attorney

To M. S. Meyberg and L. J. Meyberg, Room 403 Land Mortgage Building, 208 West Eighth Street, Los Angeles, California:

20 I, M. E. Heiser the claimant mentined in the foregoing claim, do hereby authorize you, or any one of you to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified *in* said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent and vote at any other meeting or meetings of creditors or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also, to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In Witness Whereof, I have hereunto signed my name and affixed my seal the 31st day of July, A. D. 1940.

Signed: M. E. HEISER.

Signed, Sealed and Delivered in the Presence of R Stephens.

Acknowledged before me, this 31st day of July, 1940 Paul Joseph, Notary Public in and for said County and State. My commission Expires July 2, 1944. (Seal).

[The opinion of the Circuit Court of Appeals of the Ninth Circuit, P. M. Jackson, Trustee, et al. vs. M. E. Heiser, No 9356, Apr. 30, 1940, appears at page —.]

Application of Creditors for an Order Directing Trustee to Attack Judgment.

21 Come now your petitioners, C. F. Dillard, Waldo Duncan, Sale Coffey, Lon Peavy, E. L. Franklin, F. Dillard, Carter County Title Co., Preston Dawson, Cortez Craddock, Florine Henderson, R. L. Davis, Ollie Anderton, Dr. Walter Johnson, Cain Miller, Bill F. Womack, C. F. Stinnett, Ben Sutton, W. F. Lambert, Paul Newman, Bill Newman, A. D. Davis, Ben Darling, R. G. Shrader, W. W. Shrader, H. B. Shrader, H. W. Welch, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff and Marguerite Woodruff, by their attorney W. W. Potter, and states that there has been filed in this cause a statement of bankruptcy with reference to the claim of M. E. Heiser wherein said bankrupt alleges that said claim is based on an erroneous, unjust and void judgment and prays that the Trustee be directed to proceed to attack said judgment and these applicants, having been further advised that there was no merit in the claim made by said M. E. Heiser upon which the judgment was rendered against the bankrupt, Leonard L. Woodruff, in the sum of $278,621.71 in the United States District Court for the Southern District of California in case No. 7256; that said claim if allowed to stand will materially affect the rights of these applicants and creditors and wherefore these applicants further state that the date of said judgment above referred to is March 20, 1939 and that under the rules of civil procedure, being rule number 60B, said judgment, if attack, must be attacked within six months.

Wherefore, said applicants pray that the Trustee deny the claim of the said M. E. Heiser and that he be directed to proceed to attack said judgment and take whatever steps may be necessary to protect the rights of these creditors in the premises.

W. W. PORTER,
Attorney for creditors above named.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

Application of Trustee for Authority to Employ Counsel and to Institute Legal Action to Vacate and Set Aside Judgment of M. E. Heiser, Against Bankrupt.

22 Comes now P. M. Jackson, trustee and shows to the court that he is informed that a judgment was rendered in the United States District Court, in and for the Southern District of California, Central Division, in which case M. E. Heiser was plaintiff and the bankrupt, Leonard J. Woodruff was defendant, same being case No. 7256-C, in said court, said judgment being for the sum of $278,621.71. That said judgment standing alone represents a greater part of the outstanding claims against said bankrupt. That the bankrupt claims that said judgment is wholly without merit and that if the matters therein involved had been fairly presented to the court that no judgment would have been rendered. The bankrupt's statement with reference to said claim is hereto attached and referred to and made a part of this application.

Your trustee further shows to the court that practically all the creditors of this bankrupt other than M. E. Heiser have also applied to this court for an order directing your trustee to take such legal steps as may be necessary to vacate and set aside said judgment, and he says that the other creditors are vitally interested in said matter for the reason that if said judgment is vacated the other creditors will probably receive a full and complete settlement of their debts and claims against said bankrupt, and that while said judgment is adjudged to be a valid claim that it will greatly reduce the amount that the other creditors will receive out of said bankrupt estate.

Now, your trustee says that based upon his information he is of the opinion that he should be permitted, authorized and directed to undertake to vacate and set aside said judgment and to have said claim of M. E. Heiser denied, if the facts *so* justify.

Your trustee further shows to the court that he is informed and therefore alleges the truth to be that in order to vacate said judgment that action must be taken in the courts of California where said judgment was rendered, and for said reason he should be permitted, if this court directs him, to take legal action to vacate said judgment, to employ a reputable and capable attorney in California and in Los Angeles where said judgment was rendered. That
23 he is informed that one Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelly, Attorneys of Los Angeles, California, is a reputable and capable attorney, experienced in the practice of law in California, and so far as your trustee knows that said Francis E. Cobb is not disqualified and represents no interest contrary to your trustee in this matter. That he is informed that the said Frances E. Cobb has, in the past, represented the bankrupt Leonard J. Woodruff, in certain matters and that he possibly has in the past also represented the wife of the bankrupt herein, but he is informed that said Cobb does not now represent either the bankrupt or his wife, and that he represents no person or matters that would conflict with his duty in representing this trustee in this matter.

Wherefore, your trustee prays the court to make and enter an order directing him the manner in which he shall proceed in this matter, and in the event the court directs the trustee herein to take such legal steps as may be necessary to vacate or set aside the judgment of the said M. E. Heiser hereinbefore referred to, that the court also authorize the trustee to employ Frances B. Cobb of Los Angeles, California, as attorney for the trustee for this particular matter only.

P. M. JACKSON.

Verified.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

Bankrupt's Statement With Reference to Claim of M. E. Heiser.

Comes now the bankrupt, Leonard J. Woodruff, and with reference to the claim of M. E. Heiser, filed herein and based upon the judgment rendered in favor of said M. E. Heiser by the United States District Court in and for the Southern District of California, Central Division in the case wherein M. E. Heiser was plaintiff and this bankrupt and others were defendants, and being Case No. 7256-C in said court, and said judgment being for the sum of $278,621.71, respectfully represents and shows:

I.

At the time of the filing of said suit by the said M. E. Heiser, the bankrupt was not indebted to him in any sum and at the time of the rendition of said judgment the bankrupt was not indebted to said M. E. Heiser. The material allegations of the complaint filed in said case are untrue and bankrupt did not participate in any scheme or conspiracy to defraud said M. E. Heiser of raw gems of the value of $164,000.00 or any other sums; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

II.

A copy of the complaint filed in said case is hereto attached, marked Exhibit "A"; a copy of the judgment rendered is hereto attached, marked Exhibit "B"; a copy of bankrupt's motion to vacate said judgment is hereto attached marked Exhibit "C"; copy of the order of the Court on bankrupt's motion to vacate judgment is hereto attached, marked Exhibit "D".

III.

Bankrupt says that no personal service of summons was had upon him in said action. On the 21st day of January, 1939, a summons in said action was left at the

summer residence of the bankrupt's wife at 2446 Inverness Avenue, Los Angeles, California; at that time bankrupt was not in Los Angeles, California, and did not return to Los Angeles, California, until February 26 or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939, and as soon as the bankrupt learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court refused to vacate said judgment and permit the bankrupt to defend same on its merits, as shown by copy of order attached hereto as Exhibit "D". If the bankrupt had been permitted to defend said action on its merits, he could have defeated said action and the action of the court in refusing the bankrupt permission to defend said action on its merits after timely application denied the bankrupt relief to which he was entitled in law and in equity. Bankrupt now advises the trustee that said judgment is without merit and he believes if said action is defended on its merits that a judgment will be rendered therein in favor of the bankrupt. Bankrupt can produce ample, competent and credible evidence to prove that said judgment is without merit and unjust.

IV.

Bankrupt says that a hearing was had in said court under the order of June 8, 1939, at which hearing the Court heard evidence as to the value of the property which the plaintiff claims the bankrupt converted to his own use and benefit and that on the 20th day of June, 1939, the Court announced from the bench that the judgment would be permitted to stand; but said order has not been reduced to writing and filed in said case; that the Court erred in permitting said judgment to stand as to value for the reason that the raw gems described in plaintiff's complaint were at no time of the value of $164,000.00 or any comparable value; that it was established by competent and
26 credible evidence that said raw gems do not have any such value and the Court erred in rendering judgment for the plaintiff in such sum.

V.

Bankrupt has in his possession all of the so-called raw gems which he purchased at the sheriff's sale had in pursuance of the judgment rendered in favor of bankrupt and against the Golden State Gem Company of Nevada in Cause No. 276,469 in the Superior Court of Los Angeles, California, and said so-called raw gems can be appraised by competent appraisers for the purpose of ascertaining the value thereof. Bankrupt says that he has had the same appraised by competent appraisers who will testify that said raw gems have an inconsequential value. Bankrupt was the highest bidder for said raw gems at said sheriff's sale and bought the same for the sum of $1,000.00 when there were a number of other bidders present and bidding on said socalled raw gems.

VI.

Bankrupt says that said judgment is excessive to the extent of the amount of interest included therein, to-wit: the sum of $113,036.71, because said judgment is a judgment based upon fraud and cannot draw interest except from the date of rendition thereof and said judgment is erroneous and void to the extent of the amount of the interest and if the same is not vacated and set aside and a trial permitted upon the merits of the controversy, same should be reduced in the amount of the interest included in said judgment.

VII.

Bankrupt says that he has been informed by reputable attorneys that the complaint filed in said action does not state a cause of action and that said complaint shows upon its *fact* that if the plaintiff *ever* had any cause of action the same was barred by the applicable statutes of limitation of California before the filing thereof; that said judgment is void for the further reason it does not specify the cause of action upon which judgment was rendered, there being three causes of action stated in the complaint filed in said case.

VIII.

Bankrupt says he is informed by reputable attorneys that all of the matters and things herein set

out and such other matters and things as may be available in an effort to defeat said judgment can be presented by the Trustee under Rule 60-B of the new rules of civil procedure of the United States District Court and under the statutes and decisions of the Supreme Court of the State of Californja.

Therefore bankrupt says that the claim of said M. E. Heiser should be denied and the Trustee should be directed to proceed to attack said judgment in an effort to secure a trial of said cause up on its merits.

.....

Bankrupt

.....

Attorneys for Bankrupt.

United States of America, Eastern District of Oklahoma, county of Carter. ss:.

I, Leonard J. Woodruff, the bankrupt above named, do hereby make solemn oath that the statements contained in the above statement with reference to the claim of M. E. Heiser are true according to the best of my knowledge, information and belief.

.....

Subscribed and sworn to before me, this ..... day of August, 1939.

.....

Notary Public.

My commission expires:

[Exhibits to Bankrupt's Statement. Complaint, etc. in Case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff, et al.]

[Exhibit A, complaint, is identical with exhibit B to the objections of Willie Mae Woodruff, page 45.]

[Exhibit B, judgment, is identical with exhibit A to the proof of claim of M. E. Heiser, page 10.]

Exhibit C.

Motion to Set Aside Default and Default Judgment.

Grounds:

27a "1. That said default and default judgment were entered prematurely and without authority of law."

"2. That said default and default judgment through the surprise of this defendant, his inadvertance, mistake and excusable neglect in that he was not actually notified that his son was served with process in this case until after the within default judgment was entered."

"3. That under the law when for any cause, process has not been personally served as in this case, the court may allow such defendant when justice demands, to answer to the merits of the original action.

"Said motion will be based upon this notice, the affidavit of defendant, Leonard Woodruff, the further affidavit of Edward Fitzpatrick one of the attorneys of record and affidavit of Howard Woodruff, Eugene Aycox and William DeVotot, the verified answer of defendant Leonard Woodruff record and files in the above entitled action and the following other court proceedings; case 5587-J United States District Court; Case 13393 J in Bankruptcy, United States Court; case 276469 in the Superior Court of Los Angeles County, California.

Dated March 25th, 1939."

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for defendant Woodruff.

"Filed March 29, 1939."

[Exhibit D, order on motion to vacate judgment, is identical with exhibit C-1 to the objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, page 75.]

Order Authorizing and Directing Trustee to Institute Legal Action to Vacate and Set Aside Judgment of M. E. Heiser Against Bankrupt.

28 Now on this 23d day of August, 1939, there having been presented to the court the application of the trustee for authority to institute legal action to vacate and set aside judgment of M. E. Heiser against bankrupt and for authority to employ counsel to represent said bankrupt in said matter, and there also being presented an application of creditors other than M. E. Heiser, requesting that this court direct the trustee to take said legal steps, and the court after being fully advised in the matter, finds that a default judgment was rendered in the United States District Court in and for the Southern District of California, Central Division, in which M. E. Heiser was plaintiff and the bankrupt, Leonard J. Woodruff, was defendant, same being case No. 7256-C in said court, and said judgment being for the sum of $278,621.71.

The court finds that said judgment represents a large part of indebtedness of the bankrupt herein and that said judgment being rendered by default, that the matters and things that the bankrupt claims to be a complete defense to said action has never been presented to the court, and in the judgment of this court the merits of said matter and legality of said judgment should be inquired into by court of proper jurisdiction.

The court further finds that the time within which trustee may legally attack said judgment will expire on or about September 20, 1939, and for said reasons, prompt and immediate steps should be taken to test the legality of said judgment, and that said trustee should be ordered and directed to take such legal steps as may be proper to vacate, set aside or to avoid said judgment.

The court further finds that the litigation necessary to test said judgment will necessarily have to be conducted in the state of California where said judgment was rendered and that the trustee should be authorized to employ a capable and reputable attorney who is familiar with the practice in the state of California and who is located in Los Angeles where said judgment was rendered in order

to minimize the expense as much as possible, and said trustee has applied to this court for authority to em-
29 ploy Frances B. Cobb, attorney of law of Los Angeles, who is reputed to be a capable and experienced practitioner of the law in California, and the court finds that said Francis B. Cobb is not disqualified to represent said trustee and that he represents no interest that would conflict with his duties for said trustee in this matter, and that he should be employed as attorney for the trustee in this matter.

It Is Therefore Ordered, Adjudged and Decreed by the Court that the trustee, P. M. Jackson, be and is hereby authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside and to avoid the judgment of M. E. Heiser against the bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, said case being No. 725-C in said court.

It is the further order and judgment of the court that said trustee be authorized to employ as his counsel in this matter Frances B. Cobb, a member of the firm of Cobb, Campbell, & Kelly, attorneys of Los Angeles, California.

GEO. F. CLARK,
Referee in Bankrupty.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

[Order Staying Proceedings etc.]

30 Now on this the 26th day of August, 1940, at Ardmore comes on for hearing the application of the bankrupt for stay of administration proceedings and the proposition of the bankrupt for arrangement of unsecured debts, after due notice to all parties, and the bankrupt appearing in person and by his attorneys, Champion, Champion & Fischl, and M. E. Heiser appearing by his attorneys, Rupert B. Turnbull, Leonard J. Meyberg and T. G. Gibson, and the creditors herein refererd to as C. F. Dillard et al, appearing by their attorney, W. W. Potter, and the trustee, P. M. Jackson, appearing in person and

by his attorney, Ezra Dyer, and the creditor R. F. McCrory appearing by his attorney, J. B. Moore, the court proceeds to hear said matter including objections of M. E. Heiser and Reynolds and McClain this day filed and after having heard the same upon oral and documentary evidence, and being advised in the premises;

It is Ordered, Adjudged and Decreed:

I.

That the application for stay of administration proceedings be and the same is hereby granted and the administration in bankruptcy of the estate of the debtor is stayed until further order of the court; conditioned and provided, however, that the trustee P. M. Jackson, shall remain as trustee in possession of the property of the bankrupt and shall keep and maintain the control and possession thereof and shall exercise the powers and duties of a trustee with respect thereto, having the right to lease and rent the same, collect the incomee and revenue therefrom and operate said property for the best interests of the estate,
31 subject at all times to the approval of the referee. The trustee shall continue to prosecute the litigation in California.

II.

That the application of the creditor M. E. Heiser to file objections to the so-called family claims; being the claims of Ida Belle Woodruff, Willie Mae Woodruff, Howard Woodruff, Leonard Woodruff, Jr., Marguerite Woodruff, Herman Woodruff and Robert Beveridge, is hereby granted, it appearing to the Referee that said creditor heretofore filed a demand upon the Trustee to contest said claims but that the Trustee has been prevented from making such contest by reason of the appeal on the question of jurisdiction, which appeal was prosecuted by the creditor Heiser. The trustee at this time evidences his willingness to make such contest but the Court finds that because of the stay of administration proceedings it is not the duty of the trustee to make such contest at this time. The Court further finds that any contest of claims at this time should be made by the debtor or a creditor.

III.

That any other creditor be and is hereby granted permission to file contest of any claim pending herein.

IV.

That the debtor be and is hereby granted permission to object to and contest the claim of any creditor pending herein.

V.

That the only expenses which shall be incurred herein pending determination of said proposition for arrangement of debts shall be the necessary expenses and compensation of the trustee and the referee, including expenses of California litigation, and that all expenses of contesting claims and attorneys fees shall be borne by the contesting parties and shall in no event become allowable claims herein or charges against the property of the debtor or bankrupt.

VI.

32 That objections to claims shall be filed herein within fifteen days from this date.

VII.

That this proceeding and all matters set for hearing today be and the same are hereby continued for further hearing until Monday, October 14, 1940, at 9 o'clock A. M. in the District Court room at Ardmore, Oklahoma and that all protests and objections to claims filed herein be and are set for hearing on that date.

Signed at McAlester, in the Eastern District of Oklahoma, on this the 30 day of August, 1940.

GEO. E. CLARK, Referee in Bankruptcy.

Filed Aug. 30, 1940. George E. Clark, Referee.

Objections to the Claim of Willie Mae Woodruff as Filed for $422,728.58.

33 Comes now, M. E. Heiser, a creditor of Leonard J. Woodruff, having on file a claim in the sum of $278,000.00, based upon a final judgment, and after de-

mand in writing duly made on March 4, 1940, upon the Trustee, P. M. Jackson, demanding filing of written objections to the claim of Willie M. Woodruff, the wife of the bankrupt, and after the failure of the Trustee to file any objection to said claim, the said M. E. Heiser having made his motion in open court in the presence of the Trustee P. M. Jackson and his counsel, and in the presence of the counsel of the bankrupt and other creditors, for an order permitting said M. E. Heiser to file objections, and the Court having made its written Order permitting M. E. Heiser to file objections to the claim of Willie M Woodruff;

Now, Therefore, objection is hereby made by M. E. Heiser for the benefit of all other creditors of the estate of Leonard J. Woodruff, to the said claim of Willie May Woodruff as filed herein, for the sum of $422,728.58, and for cause of objection your objector alleges that he is informed and believes and therefore alleges:

I:

That Leonard J. Woodruff and the estate of Leonard J. Woodruff, a bankrupt, is not indebted to Willie M. Woodruff in any sum or at all, and no obligation enforceable or otherwise exists in favor of the claim of Willie M Woodruff.

II:

Your objector alleges that at all the times mentioned in the claim of Willie May Woodruff and that all the times mentioned in the exhibit which is attached thereto, the bankrupt, Leonard J. Woodruff, and Willie May Woodruff were husband and wife, living together and having their home in the City of Los Angeles, County of Los Angeles, State of California; that the claim asserted by the
34 claimant and each and all thereof, is barred by the Statute of Limitations, that is to say, by Sections 337, 338, 339, 340 and 341 of the Code of Civil Procedure of the State of California.

Your objector alleges that during all of the times mentioned in the claim and at all times in respect thereto, that it was provided by the laws of the State of California in full force and effect then and now, that actions on any contract found in any instrument in writing must be com-

menced within four years; that it was and is provided by Section 337 of the Code of Civil Procedure of the State of California at all of said times that any action to recover upon a book account, whether consisting of one or more entries, or upon an account stated, or upon a balance due upon a mutual, open and current account, shall be barred within four years; that it was and is provided by the laws of the State of California that commencement of an action is barred within three years where the action is based upon a liability created by statute, upon an action for trespass upon or injury to real property, upon an action for taking, detaining, or injuring any goods or chattels, including action for the specific recovery of personal property, for an action for relief on the ground of fraud or mistake; that it was and is so provided by the laws of the State of California that any action is barred and cannot be prosecuted after the expiration of two years where said cause of action is based upon a contract, obligation or liability not founded upon an instrument in writing; it is provided that no action may be maintained after one year if said action is based upon statute, for penalty or forfeiture; that it was and is provided by Section 336 of the Code of Civil Procedure of the State of California that no action may be maintained after five years where said action is for mesne profits of real property.

Your objector alleges that more than the statutory period has expired from the time of the alleged obligations and the due dates thereof, and the date of the adjudication of the bankrupt herein as the same occurred on the 5th day of July, 1939.

III.

35 Your objector alleges that at all the times mentioned in claimant's claim, the bankrupt and the claimant were husband and wife, and as such had their home, domicile and were actually residing in the city of Los Angeles, County of Los Angeles, and State of California; that during all of the times mentioned in the claimant's claim it was and is the law of the State of California, that all property acquired by husband and wife other than that received by gift, devise or bequest is the community property of the husband and wife and as such

is under the control of the husband, and all community property is amenable to the payment of the husband's debts.

Your objector alleges that all of the property referred to in the claimant's claim was the community property of the claimant and the bankrupt, that the same was under the control of the bankrupt, not only by operation of law, but was according to the sworn claim of the wife, claimant herein, consented to be controlled by the bankrupt, the husband of the claimant.

Your objector alleges that any sums of money or property collected by Leonard J. Woodruff was community property and that he did, with the knowledge and consent of his wife, the claimant, engage in the sale and speculation of said property and monies; that Leonard J. Woodruff, with the full knowledge and consent of his wife, the claimant, opened up trading accounts in his own and fictitious names with various stock brokers in the city of Los Angeles, California, particularly with Slaughter, Anderson, and Fox, Slaughter and Fox, and Drake, Riley and Thomas, and did engage in speculative transactions in the market, by and through which the bankrupt lost, or claimed to have lost, sums in excess of $500,000.00.

That during all of said times the claimant, Willie May Woodruff, was the wife of the bankrupt, and knew and participated in the use and disposition of such community funds; knew and realized that said funds might be either pyramided into larger sums upon the successful speculation of said funds, and realized that otherwise the same might be totally lost and destroyed by reason of the usual vicissitudes of the stock market and the trading thereon.

36. Your objector alleges that at no time did Leonard J. Woodruff, the husband, guarantee in writing or otherwise the successful gambling and speculation of such community funds or of any funds claimed by the claimant to be her separate estate, and objector alleges that said funds referred to by the claimant were entirely lost in the said speculative and gambling transactions engaged in by the bankrupt and the claimant.

IV.

Objector hereby refers to the matters and things hereinbefore set forth in this objection, and alleges that by reason of such facts, the claimant, Willie May Woodruff, as the wife of the bankrupt, should in any accounting between herself and her bankrupt husband, Leonard J. Woodruff, be estopped to assert her claim herein that she is entitled to an accounting in her favor and have any claim allowed in her favor on a parity with the other unsecured creditors of the bankrupt, and objector alleges and avers that by reason of the said foregoing facts as hereinbefore set forth the claimant is estopped and enjoined from claiming or having a claim allowed on a parity with other unsecured creditors of the bankrupt, and that the claim of Winnie May Woodruff, if one exists and one is found in her favor on an accounting between the claimant wife, and the bankrupt, should and ought to be subordinated to and made junior to the claims of other unsecured creditors of Leonard J. Woodruff, the bankrupt.

V.

Your objector alleges that the said claim of Winnie May Woodruff is not a provable or allowable claim herein and that the same should be disallowed.

VI.

Your objector alleges that during all of the times referred to in the claim of Winnie May Woodruff, it was and is the law of the State of California that community property of the husband and wife may be divided in no manner contrary to law of the State of California unless an agreement has been made and exists in writing between the parties. Your objector alleges that no such agreement in writing has ever been made or exists between the claimant and the bankrupt at any of said times bankrupt and claimant were husband and wife.

VII.

37 Your objector alleges that the alleged claim of the claimant is barred by the Statutes of Limitation of the State of Oklahoma.

VIII:

Your objector is informed and believes and therefore alleges that the bankrupt, Leonard J. Woodruff, did not keep books in connection with his business or at all; that during the times mentioned in the claim of the claimant, Winnie May Woodruff, bankrupt was engaged in extensive business and commercial operations, particularly, first, the owning and operating of four antique stores in Los Angeles, California, known as the Woodruff Antique Stores, consisting of an antique store, oriental store, and Indian store, and an art gallery and medieval Arms store; that the operation of said business was extensive and said stores contained articles in excess in number of 25,000.

That during the said times mentioned in the claim of Willie May Woodruff, the bankrupt, Leonard J. Woodruff, was engaged in the cattle and oil business, and that from said oil business the bankrupt received in money from royalties the sum of approximately $5,000,000.00; that during said times the bankrupt was engaged in the business of buying and selling semi-precious gems, particularly sapphires, zircons, and opals, and that in said business, attempted to corner and monopolize the semi-precious gem business of the United States, and his activities in that regard were very extensive, and that the said bankrupt incorporated and caused to be incorporated corporations not only under the laws of the State of California but under the laws of the State of Nevada for such purposes.

That the bankrupt also during the said times aforesaid engaged in the business of lender of money in large sums to various and numerous persons in the State of California that in connection with said businesses, the bankrupt did not keep books or papers from which his financial condition could be ascertained.

That all of such facts were known to the claimant, Winnie May Woodruff, who was during all of said times the wife of the bankrupt and had knowledge of the activities, commercial, industrial, and personal, of the bankrupt.

38 That during the period mentioned in the said claim of Winnie May Woodruff, the extensive business of the bankrupt resulted in extensive litigation, and in the

County of Los Angeles, California, alone, Leonard J. Woodruff was a party to litigation in actions instituted by or against him, numbering approximately seventy-five independent lawsuits.

That the United States Government during said time accused the bankrupt of not having made and filed reports required to be made under the laws of the United States concerning the income and income tax of the bankrupt and his wife, Winnie May Woodruff, and assessed a tax in a sum in excess of $425,000.

IX.

Objector is informed and believes and therefore alleges that any conveyances made actually or in form by Leonard J. Woodruff to the claimant Winnie May Woodruff, or any transactions made by him in the name of the claimant, were made for the purpose of concealing from the United States of America, Income Tax Department, the nature and extent of the business done, the income of, the property of, the said Leonard J. Woodruff, and that the said Leonard J. Woodruff, with the full knowledge and consent of the claimant, did from time to time do business, and operate, under fictitious names and make transfers to the claimant for the sole and only reason of concealing from the United States Government and the Income Tax Department thereof, and during a portion of the time from his creditor, M. E. Heiser, the nature and extent of the actual holdings and income of Leonard J. Woodruff; and that during all of said times, the claimant knew the nature and extent of the business of the bankrupt, her husband, and knew of the nature and character and extent of the transfers, and the method and manner in which the bankrupt operated and did business, and became a party thereto, expressly for the purpose of defrauding the United States Government of the just income taxes due from the bankrupt and the claimant, and the creditors of Leonard J. Woodruff, including your objector, and that by reason of the acts, conduct and participation of the claimant in and to such transactions, she is and ought to be estopped and restrained from now asserting claim on a parity with the other creditors of the bankrupt, including your objector.

X.

39 Your objector is informed and believes and therefore alleges that the bankrupt, Leonard J. Woodruff, during the times mentioned in the claim of Willie May Woodruff, was engaged in acquiring so-called "hot" or illegally acquired jewelry and gems and was acting as a "fence" or "go-between" for the sale, disposition, and mutilation of gems and jewelry; that the said bankrupt was engaged in the business of transactions with certain aliens engaged in the smuggling from foreign countries into the United States of gems, jewelry, semi-precious stones, and the said transactions were being engaged in by such aliens participating with Leonard J. Woodruff, the bankrupt, for the purpose of avoiding the payment of customs and duties then required by law to be paid for entrance into the United States of such gems, jewelry, and semi precious stones.

That the claimant, Winnie May Woodruff, as the wife of the bankrupt, acquired a knowledge of such transactions, and threatened unless paid by transfers to be made to her of valuable properties, to expose to the authorities, including the United States Government, the nature and extent thereof.

That pursuant to such threats and without any legal consideration therefor, the bankrupt, Leonard J. Woodruff, conveyed and caused to be conveyed to the claimant, Willie May Woodruff, his wife, valuable properties, including the following—A property on Inverness Avenue, Los Angeles, California, of the then value and for which the bankrupt paid the sum of $97,000.00, which property, the claimant, Willie May Woodruff, now holds of record in her own name and claims to be the owner thereof, but which property in truth and in fact is the property of the bankrupt, Leonard J. Woodruff, and is the property of this estate and which has not been reduced to possession by the Trustee herein, and which property the claimant, Willie May Woodruff, claims adversely to the estate of the bankrupt.

That no credit has been given by the claimant for said $97,000.00 against the alleged indebtedness of the bankrupt

to the claimant; that without consideration and pursuant to and in accordance with the facts as hereinbefore alleged, the bankrupt conveyed to the claimant, and the claimant accepted, a property situated at the southwest corner of Ivar Street and Hollywood Boulevard, Los Angeles, California, of the value approximately of $100,000.00; that pursuant to the aforesaid facts and situation as hereinbefore described, the bankrupt, Leonard J. Woodruff, delivered to the claimant without consideration a quantity of antiques and archaeological exhibits, of both Panamian and early Central America Mayan and Aztec civilizations, of a value of approximately $50,000.00; that no credit has been given by the claimant for said conveyance for the value thereof as against the alleged indebtedness due her by the bankrupt.

XI.

Objector alleges that in the year ..... in the State of California, the bankrupt, Leonard J. Woodruff, wrongfully and fraudulently converted property of your objector, consisting of zircons, opals, and sapphires and semi-precious stones, and that the value of the damage done by said bankrupt, Leonard J. Woodruff, to the claimant, is represented by and evidenced by the judgment for $278,000.00, to-wit, the final judgment in favor of M. E. Heiser, as plaintiff, and Leonard J. Woodruff and P. M. Jackson, as Trustee, in bankruptcy, of Woodruff, defendants in the District Court of the United States for the Southern District of California, and affirmed on appeal by the Circuit Court of the United States for the Ninth Circuit.

That during the years from and after the date of the conversion of said gems by the bankrupt, the said Leonard J. Woodruff was constantly apprehensive of attachment which M. E. Heiser during said period might have sought and obtained in the litigation which followed said conversion and which resulted in the judgment aforesaid.

That Leonard J. Woodruff conveyed for the purpose of concealing his property and for the purpose of hindering his creditors, including your objector, M. E. Heiser, large sums of money and property to his wife, Willie May Wood-

ruff, without consideration; that the said conveyances so made did in fact hinder and delay and defraud the creditors of Leonard J. Woodruff, including your objector, M. E. Heiser, and the unsecured creditors of the bankrupt were unable to and have been unable to up to this time, collect their just claims against the bankrupt.

That the claimant, Willie May Woodruff, at all of said periods of time, knew the conditions as aforesaid, and accepted said conveyances of money and property with such knowledge and for the purpose of concealing the property in her name, and that said claimant did in fact conceal said property, including the properties hereinbefore last set forth, and now holds the same allegedly adversely to the bankrupt's estate and to the Trustee thereof, and has not accounted to the Trustee under the estate of the bankrupt or the Trustee therefor. That the value of said properties so conveyed to her during the said period aforesaid and which she now holds are in excess of a value of $400,000.00.

41 That said conveyances were and are concealments and secretings of the bankrupt's properties, that the same are held in trust by Willie May Woodruff and are in truth and in fact the property of the bankrupt and have not been accounted for by the said claimant nor surrendered by the said claimant to the Trustee.

Wherefore, objector prays that upon hearing of these objections upon said claim, an order may be made by the Court disallowing said claim in its entirety.

M. E. HEISER, Objector.

Filed Sept. 10, 1943. George F. Clark, Referee.

State of California, County of Los Angeles. ss.

M. E. HEISER, being by me first duly sworn, deposes and says:

That he is the objector in the above entitled action; that he has read the foregoing objections and *knows* the contents thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated upon in-

formation or belief, and as to those matters that he believes it to be true.

M. E. Heiser.

Subscribed and sworn to before me this 7 Day of September, 1940. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal).

Protest and Objections of Willie Mae Woodruff, Creditor of Leonard J. Woodruff, Debtor, to the Allowance and Approval, in Whole or in Part, of the Claim of M. E. Heiser.

42 Comes now the creditor, Willie Mae Woodruff, and protests and objects to the allowance in whole or in part of the claim of M. E. Heiser filed herein for the following reasons, to-wit:

I.

Said claim is based, predicated and founded upon a purported judgment rendered by the United States District Court in and for the Southern District of California, Central District, in a case therein pending wherein said M. E. Heiser was and is plaintiff and this debtor was and is one of the parties defendant, said case being No. 7256-C in said Court, and said judgment being purportedly in and for the sum of $278,621.71, a copy of said judgment being hereto attached, marked "Exhibit A" and made a part hereof; and for the purpose of identification and reference, a copy of the complaint filed in said cause is hereto attached, marked "Exhibit B" and made a part hereof; and with respect to said complaint and the judgment based thereon, and with respect to the cause or causes of action attempted to be set out in said complaint, debtor respectfully represents and shows:

(A) At the time of the filing of said suit by said M. E. Heiser, the debtor was not indebted to him in any sum and at the time of the rendition of said judgment the debtor was not indebted to said M. E. Heiser in any amount; the material allegations of the complaint filed in said case are untrue and debtor did not participate in any scheme or conspiracy to defraud said M. E. Heiser and deprive him of gems of

the *calud.* of $165,000.00; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

(B) Protestant says that no personal service of summons was had upon the debtor Leonard J. Woodruff, in said action. On the 31st day of January, 1939, a summons in said action was left at the residence of this protestant, 2446 Inverness Avenue, Los Angeles, California; at that time debtor was not in Los Angeles, California, and did
43 not return to Los Angeles, California, until February 26, or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939, and as soon as the debtor learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court refused to vacate said judgment and permit the debtor to defend the same on its merits, as shown by copy of order attached hereto as "Exhibit C-1". If the debtor had been permitted to defend said action on its merits he could have defeated said action and the action of the court in refusing the debtor permission to defend said action on its merits after timely application denied the debtor relief to which he was entitled in law and in equity.

(C) Protestant says that the complaint filed in said action does not state a cause of action under the laws of the State of California and that said complaint shows upon its face that if the plaintiff ever had any cause of action the same was barred by the statutes of limitations of the State of California before the filing thereof, as provided by Section 338, Subdivision 3, Sections 337 and 343, of the Code of Civil Procedure by the State of California.

(D) Protestant shows to the Court that said judgment is void on its face for the reason that it is rendered in pursuance of complaint based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered.

(E) Protestant, Willie Mae Woodruff, specifically denies that the debtor, Leonard J. Woodruff, wilfully, wrongfully and fraudulently converted any of the raw gems that were the basis of the purported complaint and judgment against the debtor, but that they were purchased by said debtor at a sheriff's sale under execution issued by the clerk of the Superior Court of Los Angeles County, California in cause #276469 in said court pursuant to a judgment rendered in said court against the Golden State Gem Company of California and its successor. That at said sale there were more than two bidders on said gems and that the debtor herein, Leonard J. Woodruff, was the successful bidder on thirty-five sacks of raw gems as more fully shown by the certificate of sale of personal property executed by the sheriff of Los Angeles County, California. A copy of which is hereto attached marked "Exhibit C", and made a part hereof. A copy of the judgment in said cause is also attached hereto marked "Exhibit D", and made a part hereof. Also a copy of the attachment issued in this action marked "Exhibit E" and made a part hereof.

Willie Mae Woodruff, protestant herein, further says that said sale proceeding were in all things regular and that said judgment was and is a binding judgment and that no attempt was ever made to set the same aside and that by virtue of said certificate of sale of personal property issued by said sheriff the debtor became the owner of said property in good faith and for a fair and *valuable* consideration as shown by the proceedings in said cause #276469 in said court.

(F) This protestant further states that the debtor, Leonard J. Woodruff, was induced to loan Calvin Smith $10,000.00 by the said M. E. Heiser on his statement as to the value of the raw gems. That the said M. E. Heiser stated that said gems were of great value and that he would deliver them to the said Calvin Smith to become a part of the assets of a new company to be organized by said Calvin Smith and M. E. Heiser, to be known as the Golden State Gem Company of Nevada, and that relying upon the statements of the said M. E. Heiser the debtor, Leonard J. Woodruff, did loan the said Calvin Smith $10,000.00. That at the

time of this loan the said Calvin Smith was indebted to the said Leonard J. Woodruff in a large sum of money that under Heiser's representation to the said Leonard J. Woodruff, he was convinced that upon the acquisition by the new company of the gems to be delivered by Heiser and also the acquisition of property owned by Heiser in Australia, that the new company would be financially sound and would have sufficient working capital to be successful and that Calvin Smith would, through said company, be in a position to pay the said Leonard J. Woodruff the new loan of $10,000.00 and also all or a portion of the money the said Woodruff had prior to that time loaned the said Calvin Smith. That this *complaintant* is advised and believes that the said debtor, Leonard J. Woodruff, would not have loaned the said Calvin Smith any additional money had it not been that he relied upon the statements of Heiser as to the quantity, quality and value of said raw gems or stones.

Now this *complaintant* states that said statements were false and untrue and were made for the purpose of misleading the debtor, Leonard J. Woodruff, so as to induce him to loan Calvin Smith, the sum of $10,000.00.

This *complaintant* further states that she is informed and believes that after the formation of the Golden State Gem Company of Nevada by the said M. E. Heiser and Calvin Smith, that the said M. E. Heiser became secretary of said company and as such caused to be issued to himself large amounts of stock in said company. And that during the month of September or the early part of October, 1929, he sold to Mrs. Maude Lorrer a large amount of stock in said company that he had received in consideration for the so-called raw gems which were transferred from him to the Golden State Gem Company of Nevada and which he had stored in the United States National Bank of Los Angeles, California. That the said Heiser immediately went to Europe where he remained for some two-and-a-half years during which time he did not take any interest in the management or conduct of the Golden State Gem Company of Nevada, nor did he in any way *make* an effort to protect his said gems which were in storage in said Bank, or

to preserve or to protect the gems in any way. That the said M. E. Heiser during this time left said gems under the management and control of the said Calyin Smith et al. and other officers and directors of the said Golden State Gem Company of Nevada.

Wherefore, this protestant prays the court that upon hearing of this protest that the claim filed herein by the said M. E. Heiser, be denied in its entirety and the court find that M. E. Heiser the purported claimant herein, was and is not entitled to participate as a creditor in any of the assets in the estate of Leonard J. Woodruff, debtor, or Leonard J. Woodruff, Bankrupt.

Respectfully submitted,

WILLIE MAY WOODRUFF, Protestant.

Service of a copy of the within protest is hereby acknowledged this the 9th day of September, 1940.

T. G. GIBSON.

Filed Sept. 10, 1940. Geo. F. Clark, Referee.

Exhibit A, judgment, case No. 7256, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit A to proof of claim of M. E. Heiser, page 10.

Exhibit B.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff et al., Defendants. No. 7256-C.

Complaint for Damages.
(Fraud and Conversion).

Plaintiff above named complains of defendants above named, and each of them and for cause of action alleges that:

I.

Plaintiff is and at all of the times herein mentioned has been a citizen of the Kingdom of Great Britain, a resident of the City of London, County of London, Kingdom of Great Britain and a non-citizen of the United States of America.

II.

That defendants and each of them herein, except Golden State Gem Company of Nevada, at all the times herein mentioned have been and now are, as plaintiff is informed and believes and therefore alleges, and each of them is a citizen of the State of California, United States of America, and residents of the County of Los Angeles, State of California. That no defendant herein is a citizen of the Kingdom of Great Britain nor have they or either of them been citizens thereof during all of the times herein mentioned.

III.

That the Golden State Gem Company of California, Corporation No. One, Corporation No. Two, Corporation No. Three, Corporation No. Four and Corporation No. Five are, and each of them is a corporation duly formed and existing under and by virtue of the laws of the State of California, with their principal place of business at Los Angeles, California; that defendant Golden State Gem Company of Nevada is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at the City of Los Angeles, California; that John Doe Company is a copartnership consisting of John Doe and Richard Roe; that Black & Co. is a copartnership consisting of Black One, Black Two and Black Three; that Doe One, Doe Two, Doe Three, Doe Four and Doe Five are sued herein by fictitious names for the reason that their true names are unknown to plaintiff at this time, and plaintiff prays leave to insert their true names when the same become *know*.

IV.

That the amount in controversy herein exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00).

V.

That jurisdiction arises and vests in this Court by reason of the fact that plaintiff is a citizen of the Kingdom of Great Britain, and the defendants and each of them are citizens of the United States of America and residents of the State of California.

VI.

That at all times herein referred to plaintiff herein was the sole and exclusive owner of certain raw gems known as Sapphires, Zircons, Opals and Jade, and more particularly described as follows:

Thirty-five Thousand ounces (more or less) mechanical industrial rough sapphires; Twelve Hundred ounces (1200) blue sapphires rough; One Thousand ounces (1,000) Star Sapphires rough; Twelve Hundred ounces (1200) opals black and light, rough; One Thousand ounces (1,000) zircons rough; One piece jade Twenty-eight Pounds.

Said gems are hereinafter referred to as "Raw Gems". At all times herein referred to plaintiff was and now is entitled to the exclusive possession of said raw gems.

VII.

That at all of the times herein mentioned, and particularly at and about the months of July and August, 1928, plaintiff herein was unfamiliar with the laws of the United States of America and the laws of the State of California and Nevada pertaining to the procedure and methods of incorporating companies, and with the business customs and procedure utilized in the State of California *and* State of Nevada in the process of incorporating and financing and selling of stock and securities.

VIII.

That for about twenty years last past plaintiff was and now is engaged in the business of mining and marketing raw gems and particularly emeralds, sapphires and zircons. That in or about the month of June, 1928, plaintiff arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw

genus, the product of gem mined under his control and management which were then and now are located in Sapphire Valley in New South Wales and Queensland Border in Australia. That in connection with the said mining properties and the carrying on of the said mining operations of the plaintiff herein in Australia, all of which was well known to defendants and each of them, the plaintiff required over a period of eighteen months from said July 28th, approximately One Hundred Fifty Thousand ($150,000.00) Dollars to be used for mining production of sapphires and of locating other gem mines and leases, and for two steam shovels of Bucyrus or Marion make of caterpillar wheels, full circular type, 30 ft. dipper dumping radius. That said operations were also necessary to protect the Monte Christo diamond leases and certain sapphire leases and an emerald lease under the control of plaintiff herein, which leases reverted by their terms back to the Crown upon non-fulfillment of labor conditions by plaintiff herein. That in and by the provisions of the said leases plaintiff was required to cause performance of certain labor and continuously operate the said mines under the said leases, otherwise the same to revert back to the Crown. For the purpose of equipping the said mines and prospecting and locating and operating the same, plaintiff had prior to said July, 1928, expended large sums of money and had utilized most of his available funds for said purpose.

Plaintiff, a citizen of the Kingdom of Great Britain had entered the United States enroute to London, and was present therein pursuant to the terms of a passport, and by the terms of the said passport plaintiff was permitted to remain within the United States of America only for a period of not to exceed six months enroute to London.

That in or about July, 1928, plaintiff arrived in the City of Los Angeles for the purpose of marketing the said raw gems, as described in Paragraph VI hereof, or a part thereof in order to raise capital for his said mining properties and leases aforementioned as aforesaid, and for the purpose of completing his said mining operations and establishing said market for his raw gems.

IX.

That plaintiff, in July, 1928, called on one Golden State Gem Company of California, a defendant herein, doing business at 726 South San Pedro Street, Los Angeles, California, in the gem cutting business, to sell them raw gems. That at said time and place defendant Smith representing himself to be the President and one-third owner of the said company, purchased from this plaintiff for the account of the said Golden State Gem Company of California, certain gems to the amount of over Two Thousand ($2,000.00) Dollars, and there and then informed plaintiff that they should proceed to the office of the defendant Woodruff herein, whom said defendant Smith stated was a two-thirds owner of the said Golden State Gem Company of California, and that said defendant Woodruff would pay this plaintiff therefor. That thereupon plaintiff and defendant Smith went to the office of the said defendant Woodruff and said defendant Woodruff there and then paid for the said gems.

X.

That defendants well knowing each and every matter and fact alleged in the preceding paragraphs, and well knowing that plaintiff was unfamiliar with the laws of the United States of America or the State of California pertaining to the procedure and methods of financing, incorporating and stock selling, and further that the plaintiff was unfamiliar with the business customs and methods of procedure utilized in the United States and in the State of California in connection therewith, the defendants and each of them for the purpose and with the intention of cheating, defrauding and deceiving plaintiff herein, and wrongfully obtaining and securing for their own use and benefit the title to and possession of the said raw gems then owned by plaintiff, as more particularly described in Paragraph VI hereof and the mining properties of plaintiff herein, conspired, schemed and planned together to so cheat, defraud, and deceive plaintiff for the said purpose. In furtherance of the said conspiracy the defendants did the following acts under the following circumstances, to-wit:

(a) That at the said conference between defendants

Woodruff, Smith and plaintiff herein at the office of the defendant Woodruff in the City of Los Angeles, plaintiff informed the said defendants that he had the said stock of raw gems, as mentioned in Paragraph VI hereof, then in San Francisco, and that he had under his control and owned a majority of the voting shares of the Heiser Burinah Sapphire Mines, Ltd., of Australia, and of the said gem mines located in Sapphire Valley in New South Wales and Queensland Border in Australia, then successfully producing sapphires in large quantities and on certain sapphire, emerald and diamond leases in Australia, which leases and mines required the expenditure of approximately One Hundred Fifty Thousand ($150,000.00) Dollars during the succeeding eighteen months, which plaintiff expected to raise through the sale of the said raw gems aforesaid, which were then in his possession in San Francisco, as aforesaid, and that the said leases would revert to the Crown if the aforesaid terms thereof were not fulfilled. That the said Woodruff then and there represented that he was the financial backer of the Golden State Gem Company of California, and owned a two-thirds interest therein, and that the value of the said assets of the said Golden State Gem Company of California were Four Hundred Twenty Thousand ($420,000.00) Dollars, and that the said assets had been recently appraised for that amount by one J. P. Kennedy, whom they stated was a noted appraiser of Los Angeles, and that the said assets were worth the said appraised sum, and that said company in addition thereto had over two thousand customers on its books of the finest and richest houses and people in the United States, and that regular customers of the said company who purchased large amounts of gems from them regularly included Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis of the City Engineering Company of Detroit, a Mr. Howe of Chicago, Feagen & Company, Brock & Company, and the leading jewelers of the United States, all of whom said Woodruff stated were wealthy and that the said defendants Woodruff and Smith could consume through their said agency Golden State Gem Company of California, all of the raw gems that plaintiff could possibly produce, and that he, defendant Woodruff, would be interested in financing the said plaintiff in operating the

said mines and leases of the said plaintiff herein as aforementioned, and requested plaintiff to return the following day to discuss a plan therefor.

(b) That the said defendant Smith obtained the friendship of plaintiff and stated and represented unto plaintiff that he, the said Smith would aid and assist the plaintiff in the marketing of plaintiff's raw gems aforesaid for the purposes aforesaid, and that the said defendant Woodruff was a man of great financial responsibility and business integrity and of great influence within the State of California and in the United States, and that by reason thereof plaintiff could trust the said Woodruff implicitly; that the said Woodruff's "word was his bond", that he, the said Smith, had been a partner of the said Woodruff for many years and that the said Woodruff was one of the largest oil producers in Oklahoma, and had always insisted that he desired to do business only on his word and would become insulted if required to put his agreements or contracts or promises in writing, but that said Woodruff always kept his said oral agreements and promises.

(c) That shortly thereafter said defendant Woodruff requested that plaintiff send for his said raw gems in San Francisco as aforementioned and more particularly described in Paragraph VI hereof, which said raw gems were then in San Francisco, and bring them to Los Angeles so that defendant Smith could examine the same for the said Woodruff and the said Woodruff proposed and represented to plaintiff herein as follows, to-wit:

If the said defendant Smith approved of the said raw gems aforementioned that he, the said Woodruff, would finance the said mines and leases of the said plaintiff herein; that the assets of the said Golden State Gem Company of California, an agency through which he the said Woodruff and the said Smith operated on the basis of two-thirds to the said Woodruff, who financed the same and one-third to the said Smith, who ran the business, were then of the value of Four Hundred Twenty Thousand ($420,000.00) Dollars, that the said company had an indebtedness of about Fifteen Thousand ($15,000.00) Dollars to general creditors, which he, the said Woodruff would forthwith pay and

satisfy, and that he, the said Woodruff held a chattel mortgage on certain assets of said company of Eighteen Thousand ($18,000.00) as a protection against creditors should any emergency arise, which he, the said Woodruff would forthwith cancel and satisfy and that he the said Woodruff held certain gems of value of about Seventy-five Thousand ($75,000.00) Dollars in a box in one of his vaults as security for certain other money which the said company owed him, but which indebtedness he would also cancel and which gems he would forthwith return to the said company so that the said company would be free and clear of all indebtedness whatever, and that he the said Woodruff and the said Smith would cause to be formed by their lawyer, whom they named as Alfred Barstow, a corporation to be known as Golden State Gem Company of Nevada, which they stated was to avoid "stockholders' liability" outside the State of California, and that the said Woodruff and Smith immediately upon the incorporation of the said Nevada corporation would cause to be assigned to the said corporation the said assets of the said Golden State Gem Company of California of the value of $420,000.00 free and clear of all indebtedness whatever, and that thereupon the plaintiff herein should contract with the said company for the account of the Heiser Burmah Sapphires, Ltd., for a period of forty years to sell it all the sapphires and opals and other gems owned, mined, bought or procured at prices as follows:

Best Blue Sapphires—$50.00 per oz.; Second Blues—$25.00 per oz.; Third Blues $10.00 per oz.; Fourth Blues—$5.00 per oz.; Industrial Sapphires—from 25c per oz. to $10.00 per oz.; Rough Opals—$1.00 to $40.00 per oz.; Cut Opals—25c to $2.00 per carat; Opal Beads—$1.00 ea. to $3.00 each, sizes from 3 mm. to 10 mm.; Opal Doublets—50c each to $3.00 each; Cut Sapphires Best Blue—$10.00 per carat; Second Blue—$5.00 per carat; Large Best Fancy Colored Sapphires—$40.00 per oz.; Second Best Fancy Colored Sapphires—$20.00 per oz.; Third Best Fancy Colored Sapphires—$10.00 per oz.; And for very special rare gems, whether diamond, opal, emerald or sapphire, a special price be mutually arranged satisfactory to both parties.

That the said Nevada Corporation should have a capital

of $1,500,000.00 of preferred stock and $3,500,000.00 of common voting stock; that the said preferred stock should be $10.00 per *sahre* with interest at 8Oc annually. That $5,000,000.00 of said stock be divided equally, one-half to plaintiff herein and his nominees and one-half to defendants Smith and Woodruff, one-third of which one-half was to go to Smith and two-thirds to the said Woodruff. That a majority of the said stock so allotted was to be pooled for five years for the purpose of retaining control between the said parties. That in return for the issuance of the said stock to plaintiff, plaintiff herein should cause to be transferred to the said corporation 10,000 cumulative, preference and participating shares of £1 each, of the Heiser Burmah Sapphires, Ltd. treasury stock and 2,000 of the ordinary voting shares of the said stock with the further provision that the said new corporation to be formed would be financed by the said Woodruff, and that $150,000.00 would be made available by said Woodruff over a period of eighteen months to be furnished as required, and $30,000 in cash made available by the said Woodruff for the immediate uses of the corporation, and that the said Woodruff forthwith cause two steam shovels as required to be sent to Australia and that the said corporation would further send over to Australia for development of various diamond properties then held by claim titles of plaintiff, in the neighborhood of $200,000.00 to be used for constructing dams, flumes, laying pipe lines, building machines that would save the diamonds, buying different machinery, meeting payrolls, for the diamond and emerald deposits then held by plaintiff in the form of claims or holdings, and that plaintiff should further transfer to the said company free of encumbrances 30,000 oz. of Industrial Sapphire, part of the said raw gems aforesaid then held in San Francisco by plaintiff.

That the said plaintiff herein would be paid a salary of $25,000.00 per year by the said corporation so to be formed by defendants, together with all of his expenses, and that the said plaintiff herein should immediately proceed to London and Europe for the purpose of obtaining orders and negotiating for business, and that the plaintiff herein should advance the expenses of the said trip until he arrived in London, and that defendant Woodruff would see that funds were forwarded to him in London to reimburse him for his

outlay of expenses, and would from that time on advance expenses of the plaintiff as required.

(d) Said defendants Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems aforesaid and described in Paragraph VI hereof and then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight (38) sacks totalling over forty-two hundred (4200) lbs. of raw gems, and the said large piece of jade weighing twenty-eight (28) lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed, only and not before the assets of the said Golden State Gem Company of California, so represented by said defendants to have a value of $420,000.00, were transferred to the said new company to be formed, free and clear of all indebtedness whatever, and that thereupon and thereafter the said new corporation so to be formed would purchase and pay therefor to the said plaintiff herein, c.o.d., such of the balance of the said raw gems as might be required by them from time to time or such as the said defendant Woodruff might desire to purchase from time to time for said corporation at the price stipulated in the aforementioned agreement and as more particularly set out in subdivision c hereof, and the said defendants did further represent to plaintiff herein, that the said raw gems aforementioned in Paragraph VI hereof, and each and all of them, would be perfectly safe in the said United States National Bank under the said conditions, and would be protected at all times by the said defendants and each of them for the account of the said plaintiff, and that the said 30,000 oz. of Industrial Sapphire would be removed only under the condition aforementioned and not otherwise, and that the remaining portion of the said gems valued in excess of $130,000.00 would only be removed provided such as were removed would be paid forthwith to plaintiff herein as removed, and any of the said gems so removed would be paid for in cash by the said defendants by depositing the said cash to the

account of the said plaintiff herein in the said United States National Bank, which account was opened by plaintiff herein under said agreement with the said defendants in the name of Australia American General Mining Company by plaintiff herein.

(e) That thereupon said defendants did through their said attorney Alfred Barstow prepare the formation of the said corporation to be known as Golden State Gem Company of Nevada, stating to plaintiff that it was for the purpose of carrying out the said representations and promises and did cause the said company to be incorporated. That plaintiff relied upon and thereupon relying upon the said representations, each and all of them, and believing them to be true, and without which representations and belief therein plaintiff would not have so acted, plaintiff proceeded to bring the said raw gems described in Paragraph VI herein, to Los Angeles, and acted as hereinafter set forth. That the said raw gems and all of them did arrive in the City of Los Angeles on or about the 13th day of August, 1928. That on or about the 16th day of August, 1928, and relying upon said representations, and believing each and all of them to be true, plaintiff did cause the said gems to be deposited in the said depository at the said United States National Bank at Eighth and Spring Streets, Los Angeles, California, and did give the said defendant Smith access thereto. That thereupon the said defendant Smith did examine the said gems and did approve the same and did proceed with the said plaintiff herein to the office of the said defendant Woodruff. That at said time the said defendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California, but that the said attorney Barstow was more familiar with incorporation matters, for which reason the said Coleman had not been used to incorporate the said Nevada Company and that the said Barstow had incorporated their said agency the said Golden State Gem Company of California. That said defendant Woodruff did there and then state to this plaintiff that he had cancelled and released the said $18,000.00 indebtedness of the Golden State Gem Company of California and the said Chattel mortgage securing the same and that he had can-

celled and released the indebtedness and lien covering the $75,000.00 worth of gems of the Golden State Gem Company of California which he held in his safe deposit box which he had returned to the said Golden State Gem Company of California, and he, the said defendant Woodruff did then and there in the presence of this plaintiff hand to the said defendant Smith checks totalling approximately $10,000.00 which defendants then and there stated was sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 were then and there free and clear of all indebtedness of whatsoever nature, and the said defendant Woodruff did then and there state that he would give to the new corporation as and when required for financing, a further sum of $30,000.00, and more if required, and that he would forthwith sell shares in Oklahoma and otherwise, and that he would immediately put the company upon a financial basis so that it could conform with its agreement and that plaintiff herein need have no further financial worries, and that none of the gems of the said plaintiff in the said vault at the said United States National Bank except the said 30,000 oz. of Industrial Sapphires would be removed in any form unless payment therefor at the prices agreed upon was first deposited to the account of the said plaintiff in the said bank, and that the said assets of the said Golden State Gem Company of California valued at $420,000.00 would be forthwith transferred to the said new Golden State Gem Company of Nevada free and clear of all indebtedness, and that thereupon the said Woodruff and the said Smith would cause to be transferred to the said Nevada company the said 30,000 oz. of Industrial Sapphires, and that the said 30,000 oz. of Industrial Sapphires would only be transferred to the said Golden State Gem Company of Nevada after the transfer of the assets of the Golden State Gem Company of California free and clear of all indebtedness whatever.

(f) That thereafter the said defendant Woodruff and the said defendant Smith did state and represent to the said plaintiff herein that the formation of the said Golden State Gem Company of Nevada and had been completed and that all of the said assets of the said Golden State Gem Com-

pany of California valued at $420,000.00 had been delivered over to the said Golden State Gem Company of Nevada free and clear of all indebtedness, and thereupon plaintiff herein did cause to be transferred to the said corporation the said shares aforesaid. That thereupon said defendants Woodruff and Wilith did represent to plaintiff that if he would forward the sum of $5,000.00 to his mines in Australia, he the defendant Woodruff upon arrival of plaintiff in London, would cable to said plaintiff the sum of $5,000.00 to reimburse plaintiff for said advance, and that said plaintiff did forthwith forward to the said Heiser Burmah Sapphire Mines at Australia the said sum of $5,000.00, relying upon the said representations and believing them to be true.

XI

That each and every of the aforementioned representations and statements were made by defendants and each of them for the purpose of deceiving and defrauding the plaintiff herein.

XII.

That plaintiff relied upon and relying all and singular upon each and every of the representations of defendants and each of them and believing the said representations and statements and each of them to be true and so relying thereupon, did cause the said raw gems aforementioned and particularly described in Paragraph VI to be placed in the said United States National Bank as aforesaid, and did forward the said $5,000.00 to Australia and did, paying his own expenses, proceed to London, leaving Los Angeles on or about the 5th day of September, 1928, arriving in London in October, 1928.

That plaintiff upon his said European trip proceeded to London, England, Paris, France, Idar and Oberstein, Germany, and St. Claude, Bienne, St. Moritz on the Swiss French border, and did on the said trip obtain a contract from Rabinovitch of St. Claude, France, amounting to twenty-five million francs per year for Blue Sapphires from Australia; plaintiff assembled thirty of the leading gem merchants and cutters of Germany and prepared, negotiations for large contracts of rough sapphires, opals, emeralds

and diamonds to be furnished by the company; plaintiff further obtained an option for the said company from the New Mine Sapphire Syndicate of London over all their mining properties at very advantageous terms with the intention that with the said properties of the plaintiff and the said properties optioned, the said Golden State Gem Company of Nevada, would control between eighty and ninety per cent of the sapphire mines, industrial and otherwise, known to the world; furthermore, in Belgium, plaintiff obtained an option for the said company on an automatic diamond cutting machine, which according to expert advice obtained in London said machine would revolutionize the diamond cutting of the world and would enable the diamond cutting industry to be moved to the United States by use of these machines.

XIII.

Plaintiff believed and relied upon all and singular the representations and statements of the defendants and had he not so believed said representations and promises and relied thereupon he would not have removed his said raw gems aforesaid from San Francisco and would not have left the said gems in Los Angeles as aforesaid, and would not have proceeded to Europe as aforesaid for the account of the said new company, all of which plaintiff did in reliance all and singular upon each and all of the representations, statements and promises of the said defendants, and each of them, and further relying thereupon plaintiff made no other efforts whatsoever to secure money to finance the said enterprises or to sell the said raw gems so deposited in Los Angeles.

XIV.

Said defendants and each of them further acting fraudulently and deceitfully and for the purposes herein alleged, have wholly failed to transfer or assign to the said Golden State Gem Company of Nevada the said assets of the said Golden State Gem Company of California, or any of them.

XV. [1]

That in furtherance of the said conspiracy and as a part thereof and further acting fraudulently and deceitfully and for the purposes herein alleged, said defendant Woodruff

did on or about the 2nd day of April, 1929, through said defendant Coleman as attorney, filed a certain suit in the Superior Court of the State of California, in and for the County of Los Angeles, No. 275092, wherein and whereby the said defendant sought to foreclose the chattel mortgage securing the said note of $18,000.00, which the said defendants had stated and represented to plaintiff had been cancelled, and which said note and mortgage this defendant is informed and believes and therefore alleges was fraudulent, was unauthorized by the said maker, and was made for the purpose of hindering, defrauding and delaying creditors, and by agreement with the said defendant Smith as President of the said Golden State Gem Company of California, the said defendant Smith did accept service of the complaint and summons in the said action and did default the same, and thereby and thereafter judgment was entered at the request of Defendants Woodruff and Coleman against the said Golden State Gem Company of California by defendants and the said property foreclosed upon.

XV. [2]

That on or about the 19th day of April, 1929, the said defendant Woodruff with the said defendant Coleman acting as his agent and attorney and with the knowledge and consent of defendant Smith, further acting fraudulently and deceitfully and for the purpose of cheating, swindling, defrauding and robbing plaintiff herein of the raw gems aforesaid and particularly described in Paragraph VI hereof, and knowing the said raw gems to have a value in excess of $160,000.00 at said time, did cause to be filed in the Superior Court of the County of Los Angeles, State of California, action No. 276469, wherein and whereby said defendant Woodruff filed suit against the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and each of them as defendants, on notes of the Golden State Gem Company of California given to one Jeddis & Company on or about January 20, 1928, for indebtedness of the said Golden State Gem Company of California incurred long prior thereto, one of which said notes was for $500.00 due in twelve months, upon which all had been paid but $183.15, and one of which notes was for $500.00 and was not due or payable until July of 1929, though the

said suit was filed in April of 1929, and said note contained no acceleration clause and interest was payable at its maturity. That said defendant Woodruff alleged that he had purchased the said notes from Jeddis & Company, but failed to allege or disclose therein, and the facts were that the Golden State Gem Company of California had deposited as security for the payment of the said notes jewelry and merchandise valued by said defendants in excess of $2,000.00, which said collateral was then and is now and ever since April 9, 1929, has been in the possession of defendants, as collateral security pledged for the payment of said notes, and the same was not foreclosed, returned or abandoned.

That on or about the 19th day of April, 1929, and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al., No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same has not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff. That at the time of making of said sworn statement, and affidavit, the said defendants and each of them well knew that defendant Woodruff had in his possession, and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of what

soever nature had been had and the said merchandise and collateral was at that time and ever since said time, as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of Ten Thousand ($10,000.00) Dollars and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States National Bank as aforesaid were the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929.

That thereupon in pursuance of the said conspiracy and scheme and further acting fraudulently and deceitfully and with the intent to cheat, swindle, defraud and rob said plaintiff of said raw gems and all thereof, said defendant Smith did default in the said actions and did fail to answer or cause answer to be made in the said actions to the said complaints and summons so served upon him by agreement as aforesaid, and the said defendant Woodruff and his attorney defendant Coleman under his direction did cause a default of the said Golden State Gem Company of California and the Golden State Gem Company of Nevada to be entered in the said last mentioned action on or about the 10th day of May, 1929, and did thereupon on or about the 10th day of May, 1929, cause judgment to be entered as prayed for in said complaint.

That in said complaint in said action, the said defendant Woodruff with the said Coleman as Notary thereon, did

falsely swear to and verify the said complaint with the knowledge that the same was false and untrue and well knowing that he held security of the value of $2,000.00 for the payment of the said obligation of the said notes which have not been foreclosed upon, returned or abandoned, and well knowing that the said obligation was not the obligation of the said Golden State Gem Company of Nevada nor plaintiff herein, and well knowing that they had represented to plaintiff that the said obligations had been paid, and well knowing that the raw gems in the said United States National Bank at Eighth and Spring Streets, Los Angeles, as described in Paragraph VI hereof were the sole property of plaintiff herein, who alone was entitled to possession thereof, did allege in the said complaint that defendant Golden State Gem Company of Nevada had purchased the stock and assets of the Golden State Gem Company of California and had received benefits arising out of the execution and delivery of the aforesaid promissory notes and had agreed to assume the indebtedness due thereon and to pay the same; that demand had been made upon it for payment of the said sum of $183.15 and $536.25, but that while admitting it assumed liability thereon it had failed, neglected and refused to pay the same. That such allegation was known by defendants to be false and untrue and was made as a part of said scheme to obtain from plaintiff the said raw gems as herein alleged.

That the said defendants did thereby cause the said raw gems of the said plaintiff herein on deposit in the said bank, and all thereof, to be attached in the said action as aforesaid, and did on or about the 13th day of May, 1929, after obtaining said default judgment, cause the said raw gems aforesaid of this plaintiff aforesaid and described in Paragraph VI hereof to be sold under such execution, well knowing at all times that the same were the property of this plaintiff, and did on or about the 13th day of May, 1929, at the said execution sale so caused by the said defendants, cause the same to be purchased for their account for the sum of One Thousand Dollars ($1,000.00) applied upon the said judgment, and did thereupon deceive, cheat, swindle, defraud and rob the plaintiff of the said raw gems aforementioned and described in Paragraph VI, and all of them and defendants did convert the same and all of them to their own use

and benefit, and have ever since said time held and do now hold the same from plaintiff, and refuse to deliver the same to plaintiff though plaintiff prior to the commencement of this action has demanded the same. That defendants and each of them obtained the said raw gems and all of them wrongfully and without any right whatsoever thereto, and in furtherance of their plans to cheat, defraud and rob plaintiff herein, and did wrongfully and maliciously take physical possession of the same on said date and ever since said date have exercised absolute physical control and dominion over the same, and in defiance of plaintiff's rights thereto, and have converted the same and all thereof to their own use and benefit, to the damage of plaintiff as hereinafter alleged. That on the said 13th day of May, 1929, the said raw gems aforementioned, and more particularly described in Paragraph VI herein, were reasonably worth the sum of $164,000.00 and plaintiff has been damaged all and singular by the acts and conduct of the defendants and each of them in the sum of $164,000.00.

That all and singular the conduct and acts of the said defendants and each of them were malicious, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

XVI.

That the acts and each of them of the defendant Coleman herein, as the plaintiff is informed and believes and therefore alleges, were at the instance, request and direction of defendant Woodruff herein, and for his account and benefit, and with his full knowledge and consent, and as his agent and attorney.

XVII.

That plaintiff herein discovered the fraud herein alleged in and about the month of April 1932, and at said time first discovered how and in what manner said gems had been removed and obtained by said defendant Woodruff, and plaintiff had no knowlege thereof prior thereto. This plaintiff is informed and believes and upon that ground alleges that defendants Woodruff and Smith, and each thereof, since May 13, 1929, and prior to April 1, 1932, for a period of three months and more, and since April 1932 and since

the said cause of action herein was accrued, for a period of six months and more, have been outside of the State of California and outside of the jurisdiction of this Court.

XVIII.

Plaintiff is informed and believes and upon that ground alleges that the defendants and each of them at the time of making of the said promises herein alleged to have been made, had no intention whatsoever of performing the promises or any of them, and knew that they would not perform the same. That the said promises and each and every of the above representations, statements and acts were made and done by defendants and each of them for the purpose of deceiving, defrauding and cheating, and did deceive, defraud and cheat plaintiff.

XIX.

Plaintiff relied all and singular upon each of the representations, statements and promises of the said defendants and each of them and believed said representations, statements and promises to be true, and so relying thereupon did on or about the 13th day of August, 1928, deliver unto the United States National Bank at Eighth and Spring Streets, Los Angeles, for the purposes herein alleged, the said gems aforesaid, and more particularly described in Paragraph VI hereof, and further relying thereupon plaintiff did perform each and everything upon his part to be performed, and did do each and every thing asked or requested of him by defendants or either or any of them, and signed each and every paper and instrument requested by defendants or either of them or their agents for the purpose of carrying into effect the said agreement of the parties as herein set forth.

XX.

Plaintiff believed all and singular the representations and statements of the defendants and each of them, and particularly the representations, statements and promises of the defendants Woodruff and Smith that the said raw gems of the plaintiff herein aforesaid and more particularly described in Paragraph VI hereof would not be removed or molested by them or either of them or for the account of either of them except under the conditions aforesaid stated, repre-

sented, promised and agreed by them, and had he not so believed said representations and promises and relied thereupon he would not have delivered the said gems as aforesaid nor left them in Los Angeles nor executed or accepted any of the writings or agreements herein referred to.

For a second, separate and further cause of action by plaintiff against the said defendants and each of them, plaintiff alleges that:

I.

Plaintiff reincorporates and realleges each and every allegation, matter and fact contained in Paragraphs I to XX, inclusive, of his first cause of action.

II.

As a direct and proximate result and consequence of the fraudulent and deceitful conduct of said defendants as hereinbefore alleged, and in *consumation* of their said fraudulent conspiracy and common design, the said raw gems owned by plaintiff of which plaintiff at said time was entitled to possession, were on or about May 13, 1929, seized by defendants and so were lost to plaintiff herein to his damage in the sum of $164,000.00, the said value thereof at said time, together with interest thereon, all in defiance of the rights of plaintiff herein.

III.

And further, as a direct and proximate consequence of the fraudulent and deceitful acts and conduct of the defendants, as hereinbefore alleged, plaintiff lost valuable rights and profits on the said leases aforesaid in the sum of $100,000.00.

IV.

That all and singular the conduct and acts of said defendants, and each of them, were and are malicious and fraudulent, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

For a third, separate and further cause of action by plaintiff against the said defendants and each of them, plaintiff alleges that:

I.

Reincorporates and realleges each and every allegation, matter and fact contained in I to IV, inclusive, of his second cause of action.

II.

That the said representations and statements made by defendants and each of them, were at the time of making said statements and representations known to them and each of them to have been false and untrue and were made for the purposes of deceiving, defrauding and cheating this plaintiff, and the same were false and untrue in this, to-wit:

That the value of the said assets of the said Golden State Gem Company of California was not $420,000.00, and the said assets were not worth the said appraised sum and were not worth in excess of $50,000.00; that the said Golden State Gem Company of California did not have over two thousand customers on its books, of the finest or richest houses or people in the United States, and did not have regular customers who purchased large amounts of gems from them regularly, or otherwise, or which included Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis, Howe, Faegan & Company, Brock & Company, or the leading jewelers of the United States; that the said defendants Woodruff and Smith or either of them could not consume through their agency Golden State Gem Company of California all or any large portion of the raw gems that plaintiff could produce; that the said Woodruff had no intention of financing the said plaintiff in operating the said mines and leases of plaintiff as aforementioned; that said defendant Woodruff was not a man of business integrity or of great influence within the State of California or in the United States, or who could be trusted implicitly or otherwise; that the said defendant Woodruff's word was not his bond; that the said Woodruff did not keep his oral agreements or promises; that the said defendants did not want plaintiff to bring his raw gems to Los Angeles for the purpose of examination thereof by defendants, but solely for the purpose of obtaining them for the use and benefit of said defendants without payment therefor to plaintiff; the said Woodruff had no intention of

financing said mines or leases of plaintiff herein at the time that he represented, stated and promised that he would, or at any other time; that the said Golden State Gem Company of California had an indebtedness in excess of the sum of $15,000.00 to general creditors; that at the time of making of the said promise said defendant Woodruff and Smith had no intention of forthwith or at any other time cancelling or satisfying the said chattel mortgage held by the said defendant Woodruff against certain assets of the said Golden State Gem Company of California in the amount of $18,000.00; that said defendant Woodruff had no intention at the time of making said promise that he would forthwith, or at any other time, cancel or satisfy the said indebtedness claimed to be owed to him by the Golden State Gem Company of California for which he held $75,000.00 in gems as a pledge therefor, and had no intention of returning the same; that the said defendants Woodruff and Smith had no intention of immediately or at any other time, causing to be assigned to the said Nevada company the said assets of the said Golden State Gem Company of California to the value of $420,000.00, or at any other value free or clear of all indebtedness or otherwise; that the said defendant Woodruff had no intention at the time of making said promise and representation that $150,000.00 would be made available by said Woodruff over a period of eighteen months, or any other period or that the same would be furnished as required, or of making $30,000.00 in cash available for immediate uses of the corporation, or forthwith or at any other time cause two steam shovels or any other item to be sent to Australia, or any other place for any purpose whatever; that the said defendants had no intention at the time of making said promise, that they would pay plaintiff $25,000.00 per year salary, or any other amount, for his expenses, or any part thereof, and had no intention of advancing the same; said defendants had no intention of purchasing the raw gems of plaintiff herein at the time of making said representations, or at any other time, but their intention was solely to obtain said raw gems of plaintiff without payment therefor to plaintiff; defendants had no intention of paying c.o.d. or otherwise for any part of the said property of plaintiff, and defendants and each of them knew that the said raw

gems of plaintiff would not be safe in the said depository but would be removed by them without payment therefor to plaintiff; said defendants and each of them had no intention whatever of depositing any cash whatever to the account of plaintiff herein or otherwise; that the said defendant Woodruff did not and had no intention of cancelling or releasing the said $18,000.00 alleged indebtedness of the said Golden State Gem Company of California or the said chattel mortgage securing the same, or the said indebtedness or lien covering the $75,000.00 worth of gems of the said company which he alleged he held in his safe deposit box, that the said defendant Woodruff had not returned the same or cancelled the same; that the said sum of $10,000.00 was not sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and was not used, and said defendants had no intention of using the same to pay the same; that the said assets of the said Golden State Gem Company of California valued at $420,000.00, or any other sum, were not free or clear of all or any indebtedness whatsoever; that the said formation of the said Golden State Gem Company of Nevada was not then and never had been completed and the said assets of the said Golden State Gem Company of California valued at $420,000.00 or any other sum had not been and never were delivered over to the said Golden State Gem Company of Nevada free and clear of indebtedness, or otherwise, or at all; that said defendants had no intention of forwarding the sum of $5,000.00, or any sum whatever to plaintiff to reimburse him, or otherwise; all as this plaintiff is informed and believes, and therefore alleges.

III.

That plaintiff has been damaged in the premises in the sum of $264,000.00.

IV.

That all and singular the conduct and acts of the said defendants and each of them were and are malicious, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

Wherefore, plaintiff prays judgment against said defendants as follows:

Upon his first cause of action in the sum of $164,000.00 with interest at the rate of 7% per annum from the 13th day of May 1929 to date of entry of judgment, and together with $150,000.00 exemplary damages, together with interest thereon at the rate of 7% per annum from the 13th day of May 1929, and upon his second cause of action for damages in the sum of $264,000.00, and upon his third cause of action for the sum of $414,000.00, for his costs herein incurred, and all other, further and proper relief as to the Court may seem meet.

LEONARD J. MEYBERG,
By LEONARD J. MEYBERG,
Attorney for Plaintiff.

Exhibit C.

Certificate of Sale of Personal Property.

In the Superior Court of the County of Los Angeles, State of California.

Leonard Woodruff, Plaintiff, vs. *Golfen* State Gem Co. of Nevada, a corporation, and Golden State Gem Co., a corporation, Defendants.

69 I, Wm. I. Traeger, Sheriff of the County of Los Angeles, State of California, do hereby certify that, under and by virtue of Writ of Execution issued out of the Superior Court of said County of Los Angeles, in a certain action lately pending in said Court at the suit of Leonard Woodruff plaintiff, against Golden State Gem Co. of Nevada, a corporation and Golden State Gem Co., a corporation, Defendants, attested the 13th day of May, 1929, by which I was commanded to make the sum of - - Sixteen Hundred seventy-seven and 22/100 ($1672.22) - - Dollars, with interest and costs to satisfy the judgment in said action out of the personal property of said Defendants if sufficient personal property could be found, all as more fully appears by the said writ, reference thereunto being hereby made; I have levied on, and on the 18th day of May, 1929, at 9:30 o'clock, A. M., at Los Angeles, Warehouse, 316 Commercial Street, in the city of and in said County of Los Angeles, duly sold at public auction, according to law, and

after due and legal notice, to Leonard Woodruff who mad
the highest bid therefor at said sale for the sum of On
Thousand and 00/100 ($1000.00) - - Dollars in lawful mone
of the United States; which was the whole price pai
therefor, all the right, title and interest of the said judg
ment debtor in and to the folowing described personal
property, to-wit:

35 Sacks said to contain "Uncut Sapphires"

70 Dated 18th day of May, 1929.

WM. I. TRAEGER, Sheriff.
By GEO. H. BARTER,
Deputy Sheriff.

Endorsed on Back: No. 276469. Superior Court, Count
of Los Angeles. Wm. I. Treager, Sheriff of the County
Los Angeles, to Leonard Woodruff. Certificate of Sale
Personal Property. Dated May 18, 1929.

Exhibit C-1.

Order.

In the District Court of the United States, Southern Di
trict of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff et al., De
fendants. No. 7256-C.

66 Motion of defendant Leonard Woodruff for orde
of this court, to vacate and set aside the default an
the default judgment entered herein against the said defen
ant, and to permit the said defendant to file his answer her
in, having come on regularly for hearing on the 10th day
April, 1939, at 10 o'clock A. M. of said day, the Honorabl
Judge Geo. Cosgrave presiding and Ames Peterson, Es
appearing as counsel for the defendant Leonard Woodru
and Leonard J. Meyberg, Esq. appearing as counsel f
the plaintiff herein, and the court being fully advised i
the premises, and the said Ames Peterson, Esq., counsel f
said defendant Leonard Woodruff, having applied to th
court for permission to file additional points and authoritie
and the court having allowed the said defendant Leonar

Woodruff time within which to file the same and having allowed time to the plaintiff within which to answer the same, and the said parties having filed their additional points and authorities and additional affidavits, the said parties having appeared before the court on the 25th day of May, 1939, at the hour of 2 o'clock P. M., the defendant Leonard Woodruff by his counsel Ames Peterson, Esq., and the plaintiff by his counsel Leonard J. Meyberg, Esq., and the said parties having, through their said respective counsels, stipulated that all affidavits filed be a part of the record, and the court being fully advised in the premises, and the matter having been submitted, and no adverse interest appearing,

It Is Hereby Ordered that the motion of defendant Leonard Woodruff for the order of this court to vacate and set aside the default and the default judgment heretofore entered herein against the said defendant Leonard Woodruff, and for order of this Court permitting said defendant Leonard Woodruff to file his answer herein, be, and the same is, hereby denied.

67 The parties appearing before the court on May 25, 1939, through their said respective counsel, to-wit, Plaintiff Leonard J. Meyberg, Esq., and defendant Leonard Woodruff by Ames Petersen, Esq., having further stipulated that on Monday, June 12, 1939, at 2 o'clock P. M., or as soon thereafter as counsel may be heard, the said Judge of the Court herein may hear evidence on behalf of the plaintiff and evidence on behalf of said defendant Leonard Woodruff as to the value of the property of plaintiff herein, for which damages were allowed in the judgment herein against the said defendant, which said hearing shall be without a jury, a jury being expressly waived by the parties, and the *issued* at such hearing to be limited to ascertaining by the Judge of the said Court, from such evidence to be presented by the said parties under the rules of evidence of the said Court, the sum of amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment herein against the said defendant, as in said complaint alleged, and that should the said Judge of the said Court, after such hearing, find from such evidence that the value

of the said property with interest thereon at 7% per annum from May 13, 1929, to date of entry of judgment, is less than the sum or amount of the judgment entered herein against said defendant, Leonard Woodruff, then and in such event the said judgment entered herein may be modified and reduced in amount by said Judge of said Court to such sum as the said Judge of this Court may find from such evidence, as aforesaid, together with costs as in said judgment stated, and any additional costs which the Court may find proper, and with interest thereon, and it was further stipulated between the said respective counsel representing plaintiff and said defendant Woodruff that plaintiff waives as against said defendant Woodruff his claim to exemplary and punitive damages of $150,000.00 set up in his first cause of action in his complaint, page 22, paragraph XV, lines 6 to 9, and his claim for damages of $100,000.00 for loss of rights and profits in his complaint on page 24, paragraph III, lines 21 to 24, and his claim for exemplary and punitive damages of $150,000.00 in his second cause of action in said complaint, page 24, paragraph IV, lines 26 to 30, and the claim for punitive damages in the sum of $150,000 set up in the third cause of action, page 28, paragraph IV, lines 11 to 14, and that such exemplary or punitive damages shall not be considered by the Judge in ascertaining the value of the said property, and notice of such hearing having been expressly waived,

It is the intent and purpose of this order that such competent evidence as either party desires to present be received by the said court at said hearing and considered by it in determining the actual value of the property which the plaintiff alleges was converted by the defendants.

68

Now, Therefore, It Is So Ordered.

Dated: June ....., 1939.

.....
District Judge.

Nothing herein shall be construed as a waiver by either party of his right to except for purposes of appeal. Defendant Woodruff does not intend hereby to stipulate to the truth or falsity of any allegation of the complaint.

The aforementioned order and stipulations are hereby approved as to form.

.....
Attorney for Plaintiff.
AMES, PETERSON and EDWARD FITZPATRICK,
By .....
Attorneys for Leonard Woodruff.

Exhibit D.

Judgment by Default by Court.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants. No. 276-469.

71 In this action the defendant, Golden State Gem Co. of Nevada, a corporation and the defendant, Golden State Gem. Co. a California corporation, having been served with process, and having failed to appear and answer the Plaintiff's Complaint on file herein, and the time for answering having expired, and no Answer or Demurrer having been filed, the default of said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation, in the premises, have been duly entered according to law:

Now, at this day, on the application of J. A. Coleman: attorney for said plaintiff, it is hereby ordered that judgment be entered against the said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation, in accordance with the prayer of said Plaintiff's Complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is Ordered, Adjudged and Decreed that Leonard Woodruff, the plaintiff, do have and recover of and from the said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation the sum of $1,351.34, with interest thereon at the rate of 7

per annum from April 9th, 1929 to date, amounting to the sum of $7.88, together with Plaintiff's costs and disbursements incurred in said action, amounting to the sum of $317.00, making a total of $1,676.22.

Dated: May 10, 1929.

MARSHALL F. McCOMB, Judge.

Partly satisfied by Sheriff 5/18/29.

Amt. Collected $1451.40.

Attest: L. E. LAMPTON, County Clerk.

6/5/29 by R. E. PARKIN, Deputy.

Filed May 10, 1929. Entered May 11, 1929. Book 730, Page 51.

Exhibit E

Writ of Attachment.

In the Superior Court of the State of California in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., et al., Defendents.

The People of the State of California
To The Sheriff, of the County of Los Angeles, Greeting:

72 Whereas, the above entitled action was commenced by Plaintiff in the Superior Court of the County of Los Angeles to recover from the Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, the sum of $1069.40 Dollars, lawful money of the United States, besides interest at the rate of 7 per cent per annum from 9th day of April, 1929, and costs of suit; and an affidavit for, and undertaking on, attachment, have been filed as required by law.

Now, you are commanded to attach and safely keep all property of such Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, within your County, not exempt from execution, or so much thereof as may be sufficient to satisfy

the Plaintiff's demand against such Defendants unless such Defendants give you security, by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand against such Defendants, besides costs, or in an amount equal to the value of the property of such Defendants, which has been or is about to be attached; in which case you will take such undertaking and hereof make service and return.

Witness the Honorable and Presiding Judge of the Superior Court, attested by my hand and the seal of said Court this 19th day of April, 1929.

Seal of Superior Court. (Seal)

L. E. LAMPTON, County Clerk.
By W. D. BUCKLEY, Deputy.

To the Sheriff of Los Angeles County:

73 Under and by virtue of a within Writ of Attachment, you will please attach all of the following described personal property, located at 726-728½ South San Pedro Street, Los Angeles, California, to-wit:

1 Pipe Organ Coral
4 Oil Paintings
2 Time Clocks
4 Silver Candlesticks
5 Silver Vases
1 Silver Salt Shaker
1 pr. spectacles
2 Shell ink wells
1 American Adding Machine
2 Oliver typewriters (old)
1 Large Crystal ball with stand
1 Small Crystal ball and stand
1 Large Crystal ball without stand
1 Agate Perfume Bottle with cork
1 Case of watch crystals
22 wrist watches
8 rings in cases
26 Kunsite stones (cut)
2 bbls. carborundum
1 large drop press
1 large microscope
2 small magnifying glasses
4 gas heaters
4 gas plates and gas jets
2 rolls carborundum cloth
2 looking glasses
1 Goodell press drill (hand)
1 step ladder
1 typewriter desk
1 tape wrapping machine
100 pr. Imitation beads

Also 4,000 pounds more or less of rough sapphire stones, and 1000 oz. of Zircon stones located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

You will please put a Custodian in charge at 726 South San Pedro Street, Los Angeles, California, at plaintiff's cost and remove property from the United States National Bank for safe keeping.

No chattel mtge. on above.

Filed Apr. 26, 1929.

J. A. COLEMAN,
Attorney for Plaintiff.

Sheriff's Return on Execution.

No. 276-469

State of California, County of Los Angeles, ss.

74 I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution by me received on the 13 day of May A. D. 1929, I did on the 13 day of *May* A. D. 1929, levy upon the personal property hereinafter described and noticed the same for sale as the law directs (by posting written Notice of the time and place of sale) particularly describing the property for six days successively in three public places in the Township or City where said property was sold, and on Sat. the 18th of May, 1929, at 9 & 10 o'clock A M of said day, I did attend and offered for sale at Public Auction, for United States Gold Coin, the property described

35 Sacks said to contain "Uncut Sapphires"

Sold to—Leonard Woodruff, for the sum of $1000.00

At—Los Angeles Warehouse, 316 Commercial Street, in the city of and county of Los Angeles.

Paintings, heaters, furniture, fixtures, equipment and all other personal property of similar nature belonging to said defendant,

Sold to—Leonard Woodruff, for the sum of $350.00

At—726 South San Pedro, Street, city of and county of Los Angeles

1—Sack said to contain "Uncut Sapphires"

Sold to—Irving Creek, for the sum of $150.00

At—Los Angeles Warehouse, 316 Commercial Street, in the city of and county of Los Angeles

and sold the whole of the same in three separate parcels to Irving Creek and Leonard Woodruff purchaser for the sum of Fifteen Hundred Dollars in United States Gold Coin; said purchaser being the highest bidder and said sum being the highest bid; in the aggregate for the same. And I further certify that I deducted from the said sum of $1500.00 my fees, commissions and expenses, amounting to the sum of $48.60 leaving a net balance of Fourteen hundred and fifty one and 40/100 $1451.40, which I have paid to Plaintiff's Attorney, whose receipt therefor is hereto attached,
75 and I hereby return the annexed writ partially satisfied.

Dated Sat this 18 day of May A. D, 1929.

WM. I. TRAEGER,
Sheriff of the County of Los Angeles.
By GEO. L. BARTON
Deputy Sheriff.

Filed June 4, 1929. Entered June 5, 1929. Book 730, Page 51.

[Certified.]

Protest and Objections of Debtor, Leonard J. Woodruff, to the Allowance and Approval in Whole or in Part of Claim of M. E. Heiser.

76 Comes now the debtor, Leonard J. Woodruff, and protests and objects to the allowance in whole or in part of the claim of M. E. Heiser filed herein, for the following reasons, to-wit:

Said claim is based, predicated and founded upon a purported judgment rendered by the United States District Court in and for the Southern District of California, Central Division, in a case therein pending wherein said M. E. Heiser was and is plaintiff and this debtor was and is one of the parties defendant, said case being No. 7256-C in said court, and said judgment being purportedly in and for the sum of $278,621.71, a copy of said judgment being hereto attached, marked Exhibit "A" and made a part hereof; and for the purpose of identification and reference, a copy of the complaint filed and in said *cuase* is hereto attached, marked Exhibit "B", and made a part hereof; and with respect to said complaint and the judgment based thereon, and with respect to the cause or causes of action attempted to be set out in said complaint, debtor respectfully represents and shows:

(A) At the time of the filing of said suit by said M. E. Heiser, the debtor was not indebted to him in any sum and at the time of the rendition of said judgment the debtor was not indebted to said M. E. Heiser in any amount; the material allegations of the complaint filed in said case are untrue and debtor did not participate in any scheme or conspiracy to defraud said M. E. Heiser and deprive him of gems of the value of $164,000.00; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

77 (B) Debtor says that no personal service of summons was had upon him in said action. On the 31st day of January, 1939, a summons in said action was left at the summer residence of the bankrupt's wife at 2446 Inverness Avenue, Los Angeles, California; at that time bankrupt was not in Los Angeles, California, and did not return to Los Angeles, California, until February 26 or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939 and as soon as the debtor learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court re-

fused to vacate said judgment and permit the debtor to defend same on its merits, as shown by copy of order attached hereto as Exhibit "C". If the debtor had been permitted to defend said action on its merits, he could have defeated said action and the action of the court in refusing the debtor permission to defend said action on its merits after timely application denied the debtor relief to which he was entitled in law and equity.

(C) Debtor says that the complaint filed in said action does not state a cause of action under the laws of the State of California and that said complaint shows upon its face that if the plaintiff ever had any cause of action same was barred by the statutes of limitations of the State of California before the filing thereof.

(D) Debtor shows to the Court that said judgment is void on its face for the reason that it is rendered in pursuance of complaint based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered.

(E) Debtor specifically denies that he was ever at any time a stockholder in the Golden States Gem Company of California and denies that he has ever at any time
78 had any interest therein; he specifically denies that he was ever at any time to his knowledge a stockholder in the Golden States Gem Company of Nevada and was ever at any time interested therein. Debtor alleges the facts to be that sometime during the month of July 1929, the claimant Heiser and Calvin Smith came to the debtor for the purpose of inducing the debtor to loan to Calvin Smith some money to be used by Smith and Heiser in the formation of a corporation for the purpose of marketing raw gems. That at that time the said Calvin Smith was indebted to this debtor in the sum of Approximately $50,000.00, which debtor had loaned to Calvin Smith and for only a small part of which he held security. That it was represented to the debtor that if he would advance the further sum of $10,000.000 to the said Calvin Smith that it would enable the said Calvin Smith to engage in a business which would be very lucrative and which would permit the said Calvin Smith to earn enough money to pay back the debtor the amount of money which he

had theretofore loaned him, together with the additional sum of $10,000.00 which the said Calvin Smith at that time sought to borrow from the debtor. That the debtor in pursuance of said representations did loan and advance to the said Calvin Smith the further sum of approximately $10,000.00, and the said Smith and the said Heiser agreed at that time that they would see that there was paid out of said $10,000.00 the two notes in the sum of $500.00 each to the Alphrouse Jettis & Company, which the Golden States Gem Company of California had theretofore given to said company and which the debtor had endorsed as an accommodation endorser. The debtor alleges the facts to be that said Heiser received and appropriated to his own use and benefit part of the $10,000.00 which this debtor loaned to the said Calvin Smith on the 17th day of August, 1928, and that the said Heiser and the said Calvin Smith jointly failed to pay the said Jettis notes. That thereafter the debtor was compelled to pay both of said notes and brought suit in the Su-
79 perior Court of Los Angeles County, being Cause No. 276,469 therein, against the said Golden States Gem Company of California, and its successor corporation theretofore organized by said Calvin Smith and M. E. Heiser, to-wit: The Golden States Gem Company of Nevada, which company had assumed and agreed to pay the obligations of the said Golden States Gem Company of California, to recoup his loss in the payment of said notes, which he had endorsed as accommodation endorser for the Golden States Gem Company of California. Debtor further says that at said time the only property owned by the Golden States Gem Company of California or the same company of Nevada, as far as he knew or could ascertain, were certain store furnishings, and stock of goods in the store, and certain purported raw gems which were then in storage in the United States National Bank of Los Angeles, California, and in order to recoup his loss he caused an attachment to issue against the property of said corporation, which he could locate and find, including said supposed and purported raw gems. That he obtained a valid Judgment in said suit and caused an execution to issue therein in due course and said property to be advertised for sale at public auction, and at said public auction the debtor became the purchaser of a

part of said property, he being the highest and best bidder therefor at said sale at which there were several bidders. Debtor attaches hereto as Exhibits "D" and "E" a copy of the judgment rendered in said action and a copy of the certificate of sale of personal property by the Sheriff of Los Angeles County, California. Debtor says that such sale proceedings were in all things regular, said judgment was and is a binding judgment, that no attempt has ever been made to have the same vacated or set aside, and that by said certificate of sale of personal property issued by the Sheriff of Los Angeles County, the debtor became the owner of said property in good faith and for a fair and valuable consideration.

(F) Debtor says that the said Heiser represented to him at the time that he was urging and endeavoring to induce the debtor to loan said Calvin Smith said $10,000.00 80 that said so-called gems were commercial stones of considerable value and that the acquisition of said stones by the new corporation to be formed by the said Calvin Smith and Heiser and to be known as the Golden States Gem Company of Nevada, and the acquisition by said corporation of leases owned by the said Heiser in Australia would make said corporation sound financially and would provide it with sufficient working capital to make it a success, thereby placing the said Calvin Smith in a position where his interest in said corporation would be of sufficient value and would pay sufficient dividends to permit him to reimburse the debtor for the money which he had theretofore loaned him and the additional $10,000.00 which the said Calvin Smith and Heiser were seeking at that time. That the debtor relied upon said representations and statements of the said Heiser with reference to the character, quantity and value of said stones. Debtor says that he would not have loaned said Smith said Additional $10,000.00 but for the statements of said Heiser aforesaid. Now debtor respectfully shows to the Court that said statements were false and untrue and were known to be false by the said Heiser at the time they were made to the debtor and were made for the purpose of misleading and of inducing him to loan said Calvin Smith said sum of $10,000.00 in order that the said Heiser could get a part of said money and appropriate the

same to his own use and benefit. Debtor says that instead of said stones being as represented and instead of them being commercial stones of considerable value they were and are what is known as "culls" and had at that time and now have very little value for any purpose and such facts were known to the said M. E. Heiser at the time.

(G) Debtor says that after the formation of the Golden States Gem Company of Nevada by the said M. E. Heiser and the said Calvin Smith that the said M. E. Heiser
81 was elected as secretary of said corporation and acted as such secretary and in pursuance of his duties as such secretary he caused to be issued to himself large amounts of stock in said corporation and thereafter and sometime in the month of September or the early part of October, 1928, he sold to Mrs. Maude Loller of San Francisco a large amount of stock which he owned in the Golden States Gem Company of Nevada and which he had received as consideration for the so-called raw gems which he transferred to said Golden States Gem Company of Nevada and which were stored in said United States National Bank of Los Angeles. The said Heiser immediately went to Europe where he remained for more than two years, during which time he did not take any interest in the management or the conduct of said Golden States Gem Company of Nevada nor did he endeavor to protect said raw gems which were in storage against storage charges or to realize upon their value, if any, nor to preserve or protect said property in any wise. That said M. E. Heiser during all of said time left said property and said corporation to the management and control of the said Calvin Smith and the other officers and directors thereof.

(H) Debtor respectfully represents and shows to this Honorable Court that an action was first filed against him by the said M. E. Heiser in the United States District Court for the Southern District of California in the year 1932 or 1933, and that thereafter and sometime during the month of June 1935, said action was dismissed by the court for want of prosecution. That said action was based upon the same purported cause of action set out in the complaint in the cause in which judgment was rendered and upon which the

claim herein is based. That the said M. E. Heiser
82 failed to prosecute said action.

(I) Debtor further shows to the Court that the Golden States Gem Company of California and the Golden States Gem Company of Nevada were thrown into bankruptcy sometime during the year of 1929 or 1930 and that the said M. E. Heiser filed a claim in said bankruptcy proceeding for the sum of approximately $35,000.00, being the value set upon and alleged by the said M. E. Heiser as the value of the so-called raw gems set out and described in the sixth numbered paragraph of his complaint in said Cause No. 7256-C in the United States District Court in and for the District of California, and in and by said claim in bankruptcy said M. E. Heiser alleged, among other things, that said gems did not have a value in excess of $35,000.00 and that he had parted with the title thereto and that the title to said gems was vested in the Golden States Gem Company of California and in the Golden States Gem Company of Nevada at the time said companies went into bankruptcy, and debtor alleges the facts to be that said M. E. Heiser did transfer to said Golden States Gem Company of California and of Nevada the possession and title to said raw gems prior to his departure for Europe in 1928 and that he did not there thereafter claim any right, title or interest therein or thereto for a period of more than two years and until he returned to the United States. That during the time said M. E. Heiser was gone large amounts in storage charges accrued against said raw gems and were paid by the Golden States Gem Company of Nevada and after the debtor filed his suit upon said notes to the Jettis Company, which he was compelled to pay, the debtor paid the storage charges upon said raw gems until they were removed from said bank.

(J) Debtor says that said so called raw gems are now in possession of the trustee herein and are in the identical condition they were in at the time that this debtor purchased them at said sheriff's sale and that they can be examined and appraised under direction of the Court by experts acquainted with the value of such merchandise.

(K) Debtor says that judgment in favor of said

83 M. E. Heiser is apparently based upon a cause of action founded upon fraud and that said judgment includes therein the sum of approximately $1113,000.00 in interest which accrued prior to the rendition of the judgment and debtor shows to the court that if said judgment was based upon fraud and if this debtor was guilty of fraud in the alleged converting of said property, that the said M. E. Heiser would not be entitled to interest until he had established in court the amount of damages to which he was entitled by reason of the fraud of the debtor and until his claim had become liquidated. That therefore said judgment in so far as it purports to allow interest up to the time of its rendition, is unjust, unfair, without merit, and void.

(L) Debtor specifically denies that he ever made any representations to the said M. E. Heiser as to the value of the assets of the Golden States Gem Company of California or as to any indebtedness of said company to the debtor or as to any property held by the debtor as security for the indebtedness of the said Golden States Gem Company of California to him and specifically denies all the other allegations of fraud, scheme and conspiracy set out in said complaint, and represents and shows to this Honorable Court that all of said allegations are false and untrue and can be so proven upon trial of the merits of the matters and things set out in said complaint. That said matters and things have never been inquired into by a court of competent jurisdiction and that the debtor has never been afforded an opportunity to present his defense to the matters and things set up on said *compalint* and the causes of action therein set forth have never been heard by any court upon their merits. That the debtor within nine days after the entry of said default judgment made an application for permission to the California Court to file an answer and to be heard
84 upon the merits of the controversy, but such permission was denied and debtor has never been heard upon the merits of the controversy or the allegations in said complaint.

Wherefore, premises considered, debtor prays that the court inquire into and determine the value of the claim of the said M. E. Heiser underlying his judgment and that

said claim be allowed or disallowed according to the equities of the case and in accordance with fairness and justice.

LEONARD J. WOODRUFF, Debtor.

J. B. CHAMPION
THOS. W. CHAMPION
LOUIS A. FISCHL
Attorneys for Debtor

United States of America, Eastern District of Oklahoma, County of Carter, ss.

85 Leonard J. Woodruff, the debtor mentioned and described in the foregoing protest and objections, does hereby make solemn oath that the statements contained therein are true according to the best of his knowledge and belief.

LEONARD J. WOODRUFF

Subscribed and sworn to before me this the 2nd day of Sept. 1940.

MONTEREY LEEPER, Notary Public.

(Seal)

My commission expires: May 11, 1944.

Filed Sept. 10, 1940. Geo. F. Clark Referee.

85A [Exhibit A, judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit A to proof of claim of M. E. Heiser, which appears at page 10.]

[Exhibit B, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit B to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 45.]

[Exhibit C, order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of

California, Heiser v. Woodruff et al., is identical with exhibit C 1 to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 70.]

[Exhibit D, default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al., is identical with exhibit D to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 73.]

[Exhibit E, certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co., is identical with exhibit C to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 69.]

Answer to Objections of Willie Mae Woodruff to Allowance and Approval of Claim of M. E. Heiser

Comes now M. E. Heiser and in response to the 86 protest and objections of Willie Mae Woodruff to the allowance and approval of said claimant's claim filed herein, says:

I.

That the said objector has filed a claim herein; that objections have been filed to said claim which has not been as yet allowed, and that said objector is therefore not in a position to object to the claim filed herein by this claimant.

II.

That on or about the 23rd day of August, 1939, P. M. Jackson, as a duly and regularly appointed, qualified and acting trustee in bankruptcy for the estate of said bankrupt, Leonard J. Woodruff, elected to contest and attack the said claim of this claimant, and did then and there elect the manner in which he desired to attack and contest the said claim, and the court wherein he desired to commence the said attack, contest and objection. Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson, as

such trustee, presented to the above entitled Honorable Court in bankruptcy, his application for authority and direction to institute legal action to vacate, set aside and invalidate the judgment upon which the said claim of this claimant is predicated, and for authority to employ counsel to represent him in such litigation. On the same day there was also filed herein, in the above entitled court, an application of creditors other than this claimant, but including the said objector herein, requesting that the said above entitled court direct the said trustee to take said legal steps, and contest the said claim of this claimant.

The above entitled bankruptcy court approved the said application and also the election of the said trustee in bankruptcy to contest the said claim, and the judgment, upon which it was predicated, of this claimant. In pursuance therewith the above entitled court then and there made
87 its order directing that the said trustee contest the said claim of this claimant; directing said trustee to contest the said claim in the court that rendered the said judgment; to wit: District Court of the United States, in and for the Southern District of California, Central Division. In said order the above entitled bankruptcy court found that the litigation necessary to test said judgment should be conducted in the State of California where said judgment was rendered. In said order it was further adjudged and decreed that the said trustee, P. M. Jackson, be authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to void the said judgment against the said bankrupt, Leonard J. Woodruff, and in favor of this claimant, upon which his claim on file herein is predicated, and which judgment was rendered in the said United States District Court in and for the Southern District of California, Central Division, Cause No. 7256-C, and this Honorable Court further ordered that said trustee be authorized to employ as his counsel in said matter, Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelley, of Los Angeles, California. Reference is made to the said order on file herein.

III.

That in pursuance of said order of this Honorable Bank-

ruptcy Court and its authorization and direction, and in pursuance of the said trustee's election of the manner and place in which he desired to contest the said claim of this claimant against the said bankruptcy, the said trustee, P. M. Jackson, did employ the services of the said Francis B. Cobb of Los Angeles, California, as attorney at law. Then said trustee, P. M. Jackson, did on or about September 11, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, *tucaidate*, and void the said judgment in favor of this claimant and against the said bankrupt, Leonard J. Woodruff. In said petition filed by the said trustee herein, it was claimed, asserted, and averred that the said court was without jurisdiction to enter the said judgment, for the reason that the summons was not properly served; that the said court did not have jurisdiction of the person of the judgment debtor; that the judgment was permanently entered; that the complaint is defective;
88 that the action was barred by laches; that the action was barred by the statute of limitations; that a fraud was practiced upon the court with respect to the entry of said judgment; that the said judgment was void against said trustee in bankruptcy under Section 67 (d) as amended, of the Bankruptcy Act; that said complaint does not state a cause of action against the said bankrupt; that the court erred in opening the case after judgment for the limited purpose of obtaining values of the property involved to the exclusion of all other defenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and the trustee in bankruptcy, P. M. Jackson, have a good and sufficient defense to plaintiff's alleged cause of action, and have been prevented from presenting said defense by reason of fraud, surprise and excusable neglect.

In said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors of the bankrupt herein have no right or privilege of defending or intervening with respect to said judgment, which said judgment said trustee alleged was based upon fictitious values and was obtained by methods which amounted to constructive fraud upon creditors and upon the trustee as representative of the

creditors; that none of the creditors of said bankrupt knew prior to the entry of said judgment that the alleged process had been served; that if the petition of the said trustee be granted that the said claim of M. E. Heiser, the claimant herein, can be defeated and the creditors of this estate will then receive a larger percentage of their claims; that the judgment entered in said court in favor of this claimant and against the bankrupt, Leonard J. Woodruff, is in the sum of $278,631.71, plus costs, which constitutes the claim herein of this claimant, and that the other claims against the above entitled estate, so far as is known to said trustee herein, was approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of this claimant is permitted to stand, in that the assets of the estate, so far as is known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00,
89 and that the known claims, including that of this claimant, are approximately *$1,100,00.00;* that the claimant will receive upon his said claim filed herein, approximately $100,000.00 in dividends that may hereafter be declared in this proceeding, to the detriment of the other creditors.

IV.

An answer was filed in said court by claimant, and also by his attorney, denying the allegations of the said petition; that thereafter, on the 26th day of September, 1939, the court conducted a hearing of the said matter presented by the said trustee, P. M. Jackson. The said trustee appearing by his counsel, Francis B. Cobb, and claimant herein, M. E. Heiser, appearing by his counsel; and evidence was introduced and argument was made by the said counsels, and then the case was submitted. Thereafter, on the same day the said court rendered judgment in favor of claimant therein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson.

V.

Thereafter, on or about the 29th day of September, 1939, said P. M. Jackson, the trustee in bankruptcy herein, appearing by Francis B. Cobb, his attorney, being dissatisfied

with the said decision and judgment, filed an appeal from the said judgment of the District Court of the United States in and for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District, pursuant to Rule 72, subdivision (a) and (b) of the Rules of Civil Procedure and Jud. Code, Sec. 128 (a), 28 U.S.C.A. 225(a); Rules of Civil Procedure for District Courts, Rule 55(a), (b) (2) 28, U.S.C.A. following Sec. 723(c). Said appeal was perfected in accordance with the law, and briefs were filed and submitted by the said trustee herein as the appellant, and the claimant herein filed his brief as appellee.

VI.

Said appeal came on regularly for hearing before the said United States Circuit Court of Appeals for the Ninth Circuit, and after argument of counsel for said trustee, P. M. Jackson, and the argument of counsel for this claimant, the matter was submitted for decision. Thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit made and filed its decision and order affirming the said judgment. That on or about the 31st day of May, 1940, the United States Circuit
90 Court of Appeals for the Ninth Circuit issued its mandate pursuant to the said decision and the same was duly and regularly filed in said court. Said opinion and decision of the United States Circuit Court of Appeals for the Ninth Circuit is reported in 111 Fed. (2) 310.

VII.

That in the said matter of Jackson v. Heiser in the said Circuit Court of Appeals in and for the Ninth District, No. 9356, instituted by the said P. M. Jackson, trustee in bankruptcy herein, in an appeal from the decision from the said United States District Court, in and for the Southern District of California, Central Division, which said judgment was in favor of claimant, M. E. Heiser, and against the said P. M. Jackson, trustee in bankruptcy herein, the said United States Circuit Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things as follows, to wit:

1. That the proceeding filed by the trustee in bankruptcy, P. M. Jackson, in the United States District Court in and for the Southern District of California, Central Division, was an independent action; that as such the said decision was a final decision and therefore appealable.

2. (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition thereto the defendant in said action appeared and participated therein, voluntarily submitted himself to the jurisdiction of the court, thereby waiving service.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. The complaint stated a cause for action.

7. The complaint was not otherwise defective.

8. The complaint did not show that the action was barred.

9. The defendant was not prevented from presenting a defense by reason of fraud, accident, surprise, or excusable neglect.

10. That there was no abuse of discretion by the court.

11. That the court did not err.

12. That the order or judgment of the District Court in and for the Southern District of California, Central Division, is affirmed.

That no rehearing was asked and that the time
91 within which a motion for rehearing can be made has expired; that no appeal was taken from the said judgment, and no writ was asked for, or obtained, from the Supreme Court of the United States in said matter; that time within which to have the said case reviewed in the Supreme Court of the United States has expired; that the said judgment of the said District Court of the United States in and for the Southern District of California, Cen-

tral Division, and of the Circuit Court of Appeals for the Ninth Circuit have become final; that the judgment for $278,631.71 against the bankrupt, Leonard J. Woodruff, upon which the claim of the claimant herein is predicated, has become final.

VIII.

Claimant says that the said judgment of the United States District Court in and for the Southern District of California, Central Division, in the proceedings instituted by P. M. Jackson, trustee in bankruptcy herein, and the said decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit, in its affirmance thereof upon appeal, are res adjudicata and conclusive of those matters which were determined in said litigation and those which might have been determined but were not presented; that the said judgments against the trustee in bankruptcy also bind the objector herein and all other creditors, and the said judgments are res adjudicata of Paragraphs (A), (B), (C), (D), (E), and (f) set out in the protests and objections of the objector herein to the allowances and approval of the claim of this claimant, and the said objector is estopped by the proceedings of the trustee in bankruptcy, P. M. Jackson.

That in the original action, No. 7256-C filed in the District Court of the United States in and for the Southern District of California, Central Division, this claimant M. E. Heiser, was plaintiff and the bankrupt, Leonard J. Woodruff, was defendant.

In the action filed by the trustee in bankruptcy herein, P. M. Jackson said trustee was petitioner and this claimant, M. E. Heiser, respondent.

In the appeal filed in the Circuit Court of Appeals
92 for the Ninth Circuit, cause No. 9356, the said trustee in bankruptcy, P. M. Jackson, was appellant and your claimant, M. E. Heiser appellee.

IX.

Specifically answering Paragraph (A) of said objections, claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending in the United

States District Court in and for the Southern District of California, Central Division, between this claimant as plaintiff and the bankrupt, Leonard J. Woodruff, as defendant, and for the same reason or cause of action as set forth in said objection by the objector herein, judgment was therein duly given and made, whereby the said matter alleged in Paragraph (A) was decided against the said bankrupt, Leonard J. Woodruff, and is res adjudicata of all the said matter set up in said objection (A). In said cause of action it was decided by said judgment that the allegations of this claimant's complaint in said case was true and that debtor, Leonard J. Woodruff, the bankrupt herein, did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser and to deprive him of gems of the value of $164,000.00. Said matter alleged in Paragraph (A) of said objection is concluded by said judgment which is now final.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, by order of this court on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding wherein he presented the same facts as are again set up in said objection (A) and asked the court to vacate and set aside the said judgment for said cause. Issues were formed and tried, then judgment was duly given by the said court against the said B. M. Jackson, trustee in bankruptcy, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, the trustee herein, being aggrieved by the said judgment, then appealed to the United States Circuit Court of Appeals for the Ninth Circuit, which said Appellate Court on the 30th day of April, 1940, affirmed the said judgment, as heretofore more particularly described herein.

That the attack upon the said judgment by the said
93 trustee in bankruptcy concludes and estops said objector to again present or assert the matter contained in said Paragraph (A), which was decided in and by the said prior judgments, which said judgments are now final.

X.

Specifically answering Paragraph (B), claimant says that

on the 8th day of June, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, between this claimant as plaintiff, and the bankrupt herein as defendant, an order or judgment was duly given and made, deciding that personal service of summons was had on the said Leonard J. Woodruff in said action, which is the same matter as that set out in Paragraph (B). That said judgment is final.

That on the 25th day of May, 1939, the said parties stipulated before the said court in said proceedings, for a trial, by the court of the issues representing the value of the gems that the defendant, the bankrupt herein, had fraudulently converted from this claimant. The stipulation provided that if the court found, after a hearing, that the gems were of less value than the amount of the judgment that it may be reduced accordingly and the defendant waived exemplary or punitive damages.

On the 29th day of June, 1939, a hearing and trial of said matter was conducted by the said court. The parties appeared by counsel and were present in the court. Evidence was introduced by both parties and after argument of counsel the court found that the value of the property was the amount fixed in the judgment.

The Circuit Court of Appeals, Ninth District, upon appeal by the trustee in bankruptcy herein, P. M. Jackson, as hereinbefore more fully described, decided on April 30, 1940, that Leonard J. Woodruff, the defendant in said action, was properly and personally served with summons. That even if he had not been properly served with process, by entering into said stipulation and by participating in the hearing the said defendant, Woodruff, waived such service and voluntarily submitted himself to the jurisdiction of the court. Said judgment is now final and objector is estopped thereby to question said matter herein and it is res adjudicata of the matter set up in Paragraph (B) by the objector.

94

On the 11th day of September, 1939, at Los Angeles, California, a proceeding was filed by the trustee herein, P. M.

Jackson, to have the said judgment, upon which this claimant's claim is predicated, vacated and set aside, and among the *reason* given was because no personal service of summons was had on the defendant, the said Leonard J. Woodruff. Thereafter, on the 26th day of September, 1939, judgment was duly given and made by said court deciding the matter against the said P. M. Jackson, the trustee in bankruptcy herein, and in favor of the claimant herein.

Thereafter the said P. M. Jackson, trustee, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit. That on the 30th day of April, 1940, said United States Circuit Court of Appeals for the Ninth Circuit, in a decision entered on that day, and mandate filed on the 31st day of May, 1940, decided that the said Leonard J. Woodruff was regularly and lawfully served with summons in said action. The said judgment is final. The said objector is therefore estopped to reassert and present the same matter herein because of the said litigation and objection heretofore made by the trustee in bankruptcy herein, P. M. Jackson.

XI.

Specifically answering Paragraph (C), claimant says that on the 11th day of September, 1939, at Los Angeles, California, the trustee herein, P. M. Jackson, by order of this court as hereinbefore set out, filed a proceeding in the District Court of the United States in and for the Southern District, Central Division, cause No. 7256 C, to have the said judgment upon which this claimant's claim is predicated herein, vacated and set aside. One of the reasons presented in said proceeding was because the complaint in the said action wherein the said judgment was entered, did not state a cause of action under the laws of the State of California, and that said complaint showed upon its face that it was barred by the statutes of limitations of the State of California before the filing thereof, which is the same subject matter as is now set up herein said Paragraph (C) of said objections. After a hearing on the 26th day of September, 1939, judgment was duly given and made by said court, deciding the said matter against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of your claimant.

Thereafter the said trustee, P. M. Jackson, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit. On the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit rendered its decision affirming the said judgment of the District Court of the United States in and for the Southern District of California, Central Division. Mandate was filed on the 31st day of May, 1940. In said decision the said appellate court expressly decided that the complaint in the said action did state a cause of action and that it was not barred by the statutes of limitation. Said judgment is final as herein before more expressly set out. That by the said proceeding said objector is therefore estopped by res adjudicata to again re-assert the same matter by the prior action of the trustee herein.

97

XII.

Specifically answering Paragraph (D), claimant says that the said judgment is not void on its face for the reason that the complaint was based upon *three* separate and specific causes of action and the judgment does not specify the cause upon which it was rendered. Claimant says that the same point was raised before the said District Court of the United States in and for the Southern District of California, Central Division, and decided against both the bankrupt and the trustee, P. M. Jackson, in cause No. 7256-C. Thereafter it was presented upon appeal to the said Circuit Court of Appeals for the Ninth Circuit, where the judgment of the lower court was affirmed in cause No. 9256.

XIII.

Answering Paragraph (E) of said objections, claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C in the United States District Court in and for the Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and the bankrupt, Leonard J. Woodruff, as defendant, the matter and facts alleged in Paragraph (E) was presented by the said Leonard J. Woodruff, and after due consideration by the court, judg-

98 ment was entered against the said defendant. In said cause of action it was decided that the allega-

tions of this claimant's complaint, filed in said case, were true and that the said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and deprive him of his said property by conversion. The said judgment is now final and the claimant's claim filed herein is based upon that judgment.

By instructions of this court P. M. Jackson, trustee in bankruptcy herein, did on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States in and for the Southern District of California, Central Division, cause No. 7256-C, file a proceeding to have the said judgment vacated and set aside, and the matter set out in said objection (E) was pleaded and set up therein as reasons therefor. Said facts were fully presented and, after due consideration by the said court, was decided against the said P. M. Jackson, trustee in bankruptcy, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of this claimant, on the 26th day of September, 1939. Thereafter said P. M. Jackson, trustee in bankruptcy herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment.

That the objector herein is thereby estopped to assert and present the matter contained in said Paragraph (E), which is the same as was decided against the trustee herein by the said prior judgments, in the said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final as hereinbefore more specifically set out. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it is waived, or it is res adjudicata, and the said judgments estop the said objector not only as to every ground of recovery or defense actually presented in the said action, or actions, but also as to every ground which might have been presented.

XIV.

Specifically answering Paragraph (F) of said objections, claimant says that on the 20th day of March, 1939, at Los

Angeles, California, in an action then pending, No. 7256-C,
in the United States District Court, Southern Dis-
97 trict of California, Central Division, between this
claimant, M. E. Heiser, as plaintiff, and the said bankrupt, Leonard J. Woodruff, as defendant, and for the same cause of action and based upon the same facts as are alleged in the said Paragraph (F), judgment was duly given and made, wherein the said matter alleged in said Paragraph (F) was presented by the defendant, Leonard J. Woodruff, the bankrupt herein, and after due consideration by the said court, was decided against him and is now res adjudicata of all of the said matter, and the objector is estopped thereby from again presenting the same herein.

In said cause of action it was decided that the allegations of this claimant filed in said case were true, and that the said Leonard J. Woodruff did enter a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment. Thereafter, P. M. Jackson, the trustee in bankruptcy herein, was ordered by this court to contest the judgment upon which the claim of this claimant is predicated and pursuant to the order of this court said P. M. Jackson, trustee in bankruptcy, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside, and alleged therein the same facts and reasons as those that are set forth in the said objection (F). Said facts were presented and after due consideration by the said court it was decided against him, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of this claimant on the 26th day of September, 1939.

Said P. M. Jackson, trustee, appealed from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, cause No. 9356, and said Appellate Court on the 30th day of April, 1940, affirmed the said judgment. Said judgment is now final as is hereinbefore set forth more specifically. The said objector is thereby estopped to assert

and present again the matter contained in said Para-
98 graph (F), which is the same facts as presented and decided against said trustee, by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, if any of the matter set out was not fully presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop said objector not only as to every ground of recovery or defense actually presented in the said action, or actions, but also as to every ground that might have been presented.

Wherefore, claimant asks that his claim on file herein be allowed.

M. E. Heiser, Claimant.
Mitchel S. Meyberg,
Leonard J. Meyberg,
Attorneys for claimant.

[Verified.]

Filed Sep. 23, 1940. Geo. F. Clark, Referee.

Answer to Objections of Leonard J. Woodruff to Allowance and Approval of Heiser Claim.

99 Comes now M. E. Heiser and in response to the protest and objections of the bankrupt, Leonard J. Woodruff, to the allowance of his claim filed herein says:

I.

That on or about the 23d of August, 1939, P. M. Jackson as the duly and regularly appointed, qualified and acting trustee in bankruptcy for the estate of said bankrupt, elected to contest and attack the said claim of respondent and then and there elected the manner in which he desired to attack and contest the same, and the court wherein he desired to commence the same. Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson, as such trustee, presented to this Honorable Court in Bankruptcy his application for authority and direction to institute legal action to vacate, set aside and invalidate the judgment upon which the said claim was predicated.

and for authority to employ counsel to represent him and the bankrupt in such litigation. On the same day there also was filed in said court an application of creditors, other than the said H. E. Heiser, requesting that the said above entitled court direct the said trustee to take the said legal steps. The above entitled Bankruptcy Court approved the said application and election of said trustee in bankruptcy to contest the said claim and judgment of the said L. E. Heiser. In pursuance therewith the above entitled court then and there made its order directing that the said trustee contest the said claim of this respondent and the judgment upon which it is predicated. This above entitled court did then and there make its order directing said trustee so to do in the court that rendered the said judgment, to wit: District Court of the United States, Southern District of California, Central Division.

100 In said order the above entitled Bankruptcy Court found that the litigation necessary to test said judgment should be conducted in the State of California where said judgment was rendered. That in said order it was adjudged and decreed that the trustee P. M. Jackson be authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to void the said judgment of this respondent against the said bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, that case being No. 7256-C in said court, and this Honorable Court further ordered that said trustee be authorized to employ as his counsel in said matter Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelley of Los Angeles, California. Reference is made to the said order on file herein.

II.

That in pursuance of the said order of this Honorable Bankruptcy Court and its authorization and direction and in pursuance of the said trustee's election of the manner and place in which he desired to contest the said claim of this respondent against the said bankrupt, the said trustee, P. M. Jackson, did employ the services of the said Francis B. Cobb of Los Angeles, California, as its attorney. The objector herein, Leonard J. Woodruff, the bankrupt, did

then and there elect to contest the said claim filed herein by this claimant, M. E. Heiser, and for that purpose employed the services of the law firm of Cobb, Campbell & Kelley, of Los Angeles, California, who were the same attorneys that were engaged by the said trustee, P. M. Jackson. The said trustee, P. M. Jackson, together with said bankrupt and objector herein, Leonard J. Woodruff, did, on or about September 11, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, invalidate and void the said claim and judgment of respondent against the said bankrupt, Leonard J. Woodruff; that

in said petition and action in said proceeding filed
101 by the said trustee herein and joined in by the said
Leonard J. Woodruff, bankrupt herein, who is the objector herein, it was claimed, asserted and averred that the said court was without jurisdiction as to the defendant Woodruff to enter the said judgment in that summons was not properly served; that the court did not have jurisdiction of the person of the judgment debtor; that the judgment was *prematurely* entered; that the complaint is defective; that the action was barred by laches; that the action was barred by the statute of limtiations; that a fraud was practiced upon the court with respect to the entry of the said judgment; that the said judgment was void as against said trustee in bankruptcy under Section 67 (d) as amended, of the Bankruptcy Act; that said complaint does not state a cause of action against the said Leonard J. Woodruff; that the Court erred in opening the case after judgment for the limited purpose of obtaining values of the property involved to the exclusion of all other defenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and P. M. Jackson, trustee in bankruptcy for the Estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged cause of action, and have been prevented from presenting said defense by reason of fraud, surprise and excusable neglect.

In said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors of the bankrupt herein have no right or privilege of defending or intervening with respect to said judgment, which judgment said

trustee and the objector herein, Leonard J. Woodruff, the bankrupt, based upon fictitious values and was obtained by methods which amounted to constructive frauds upon creditors and upon the trustee as a representative of other creditors; that none of the creditors of the said bankrupt knew prior to the entry of the said judgment that the alleged process had been served; that if the petition of the said trustee be granted that the said claim of M. E. Heiser

102 can be defeated and the creditors of this estate will then receive a large percentage of their claims; that the judgment entered in the said court in favor of this respondent and against the bankrupt, Leonard J. Woodruff, is in the sum of $278,631.71, plus costs, which constitute the claim herein of this respondent and that the other claims against the above entitled estate, so far as known to the said trustee herein, are approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of this respondent is permitted to stand, in that the assets of the estate, so far as known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00, and that the known claims, including that of this respondent, are approximately one million one hundred thousand dollars; that this respondent will receive upon his said claim filed herein approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors.

III.

That in said proceeding the said P. M. Jackson, trustee, and the objector, Leonard J. Woodruff, presented as cause to vacate the said judgment, facts as are set out in Paragraphs (E), (F), (G), (I); (J), (K), and (L) of the objections herein, which claimant says are false and untrue. Said matters were placed before the said court and the court duly considered them before it decided that said facts were untrue, and that the said Leoanrd J. Woodruff did participate in a scheme and conspiracy to defraud this claimant and to deprive him of his said property by conversion. The defense that said objector claims herein to have, was presented and considered by the court but the court did not believe the said facts to be true.

IV.

103 An answer filed by your claimant and also by his attorney denying the allegations of the said petition. That thereafter the trial and hearing on the said petitions and cause instituted by the said trustee, P. M. Jackson, and by the bankrupt, Leonard J. Woodruff, came before the United States District Court for the Southern District of California, Central Division, on the 26th day of September, 1939, the said trustee appearing by his counsel, Francis B. Cobb, and the said bankrupt, Leonard J. Woodruff, appearing by his counsel, Edward Fitzpatrick and Hiram Casey, and Willie Mae Woodruff, Howard Woodruff appearing by their counsel, Mark Feiler, certain creditors of the bankrupt estate appearing by their counsel, and your claimant herein, M. E. Heiser, appearing by his counsel, and evidence was introduced, and argument was made by the said counsel, and the case submitted. Thereafter on the said day the said court rendered judgment in favor of respondent, the claimant herein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson, and against the said bankrupt, Leonard Woodruff.

V.

Thereafter on or about the 29th day of September, 1939, said P. M. Jackson, trustee in bankruptcy herein, appearing by Francis B. Cobb, attorney, and the said Leonard J. Woodruff, the bankrupt herein, appearing by Edward Fitzpatrick, and Cobb, Campbell & Kelley, his attorneys being dissatisfied with the said decision, filed an appeal from the said judgment of the District Court of the United States for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District pursuant to Rule 73, subdivision (a) and (b) of the Rules of Civil Procedure and Jud. Code, Sec. 128 (a) 28 U. S. C. A. 225 (a); Rules of Civil Procedure for District Courts, Rule 55 (a), (b), (2) 28 U. S. C. A. following Sec. 723 (c). The said appeal was perfected in accordance with the law and briefs were submitted by the said trustee herein, and the said Leonard J. Woodruff, bankrupt herein, each as the appellants, and respondent, the claimant herein, filed his brief as appellee.

VI.

104 The said matter came on regularly for hearings before the said United States Circuit Court of Appeals for the Ninth Circuit, and after hearing arguments of counsel for said trustee in bankruptcy, P. M. Jackson, and for said Leonard Woodruff, the bankrupt herein and argument of attorney for your affiant the same was submitted for decision by the court. Thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit, made and filed its decision and order affirming the said judgment; that thereafter on or about the 31st day of May, 1940, the said United States Circuit Court of Appeals for the Ninth District issued its Mandate pursuant to the said decision, and the same was duly and regularly filed in said court. No rehearing was requested and no appeal to the United States Supreme Court was taken. The time therefor has expired, and the said judgment is final.

VII

That in the said Circuit Court of Appeals in and for the Ninth District, No. 9356, the appeal instituted by the said P. M. Jackson, trustee in bankruptcy herein, and the bankrupt herein, Leonard J. Woodruff, from the decision of the United States District Court, Southern District of California, Central Division, which was in favor of respondent, M. E. Heiser, claimant herein, and against the said P. M. Jackson, trustee, and the said bankrupt in the said proceedings commenced by the said P. M. Jackson, trustee, and by and joined in by the said Leonard J. Woodruff, bankrupt herein, in the said District Court for the Southern District of California, the said United States Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things that, to wit:

1. The action of the said trustee and the said bankrupt in the United States District Court for the Southern District of California was an independent action or proceeding; that as such the said decision rendered herein by said District Court was a final decision.

105 (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition the defendant Woodruff appeared in the said action and participated therein, waived service and voluntarily submitted himself to the jurisdiction of the court.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. The complaint stated a cause of action.

7. The complaint was not otherwise defective.

8. The complaint did not show that the action was barred.

9. Neither the trustee, P. M. Jackson, nor the bankrupt, Leonard J. Woodruff, was prevented from presenting defense by reason of fraud, accident, surprise or excusable neglect.

10. That there was no abuse or discretion by the court.

11. That the court did not err

12. That the order of the District Court for the Southern District of California is affirmed, which order denied the attack upon the said judgment and claim in the proceeding commenced in the said court by the said trustee, P. M. Jackson, and by and joined in by the said bankrupt, Leonard J. Woodruff, and decided in favor of your claimant, M. E. Heiser, respondent herein.

VIII.

That no rehearing of the said matter was asked of the Circuit Court of appeals for the Ninth Circuit and the time the motion for rehearing could be filed has expired. That no appeal was taken from the said judgment of the said United States Circuit Court of Appeals for the Ninth District, and no writ asked for or obtained from the Supreme Court of the United States in said matter. That time within which to have the said case reviewed in the Supreme Court of the United States has expired. That the said judgment of the said District Court of the United States for the Southern District of California in favor of M. E. Heiser, claimant

herein, and against Leonard J. Woodruff, bankrupt herein, in the amount of $278,631.71, has become final.

106 That the decision of the District Court of the United States for the Southern District of California in favor of claimant herein and against P. M. Jackson, trustee, and Leonard J. Woodruff, bankrupt herein, upon the said action and proceeding instituted and filed in the said court by the said P. M. Jackson, trustee herein, pursuant to his election and the order of the above entitled court in bankruptcy directing the said litigation to vacate, set aside, invalidate and void said claim and judgment of the claimant, M. E. Heiser, has become final.

IX

Respondent says that the said judgment of the United States District Court for the Southern District of California, Central Division, in the proceedings instituted by P. M. Jackson, trustee in bankruptcy, and the bankrupt, Leonard J. Woodruff, who is the objector to the claim of respondent, M. E. Heiser herein, and the decision and judgment of the United States Circuit Court Appeals for the Ninth Circuit upon appeal are res adjudicata and conclusive of those matters which were determined in said litigation and those which might have been determined but were not presented, and that the said judgments are res adjudicata of Paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), and (L) set out in the protest and objections of the bankrupt, Leonard J. Woodruff, to the allowance and approval of the claim of respondent, M. E. Heiser, and that the said Leonard J. Woodruff, the objector to said claim, is estopped because of the matter hereinbefore set out.

That in the original action, No. 7256-C, filed in the District Court of the United States, Southern District of California, Central Division, claimant, M. E. Heiser, was plaintiff and the objector, Leonard J. Woodruff, and bankrupt, was defendant.

In the action filed by the objector Leonard J. Woodruff, together with the trustee in bankruptcy, P. M. Jackson, they were petitioners and claimant, M. E. Heiser, respondent.

107 In the appeal filed in the Circuit Court of Appeals, Ninth Circuit, Cause No. 9356, the said objector herein, Leonard J. Woodruff, together with the said trustee, were appellants and your claimant, M. E. Heiser, appellee.

X.

Specifically answering Paragraph (A) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said objection, the said court had jurisdiction of the subject matter and of the person of objector. Judgment was therein duly given and made whereby the said matter alleges in said Paragraph (A) was decided against the said objector, Leonard J. Woodruff, and is res adjudicata of all the said matter set up in said objection (A). In said cause of action it was decided by said judgment that the allegations of this claimant's complaint in said case were true, and that debtor, Leonard J. Woodruff, did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of gems of the value of $164,000.00. Said matter is concluded by said judgment which is now final.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding partly based upon the same facts as are again set up in said objection (A) to have the said judgment vacated and set aside. Issues were formed and tried, then judgment was duly given and made by said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

108 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, then appealed from the said judgment to the United States Circuit Court of Ap-

peals for the Ninth District, and the said United States Circuit Court of Appeals for the Ninth District on the 30th day of April, 1940, affirmed the said judgment.

That the objector, Leonard J. Woodruff, is thereby concluded and estopped to assert the matter contained in said paragraph, which is the same as was decided in and by the said prior judgments. Said judgments are now final.

XI.

Specifically answering Paragraph (B) claimant says that on the 8th day of June, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, between this claimant, M. E. Heiser, and the objector, Leonard J. Woodruff, an order or judgment was duly given and made deciding that personal service of summons was had upon the said Leonard J. Woodruff in said action, which is the same as that set out in said Paragraph (B). That said judgment is final.

That on the 25th day of May, 1939, through and by his attorneys, the said objector, Leonard J. Woodruff, stipulated before the said Court in said proceedings, for a trial by the Court of the issues respecting the value of the gems that the objector, Leonard J. Woodruff, had fraudulently converted from this claimant. This claimant by and through his counsel also stipulated to such hearing and waived exemplary damages. It was stipulated that the Court hold a hearing and if it found that the said gems were of less value than the amount of the judgment that the said judgment may be reduced accordingly.

On the 29th day of June, 1939, such hearing and trial was conducted by the said court. The objector, Leonard J. Woodruff appeared by counsel and was present in person. Claimant, M. E. Heiser, was also represented by counsel; evidence was introduced by both parties and after argument the Court found the value of the property to be the amount fixed in the judgment.

109 The Circuit Court of Appeals, Ninth Circuit, on appeal by the said objector, Leonard J. Woodruff, and the

trustee herein, decided on April 30, 1940, that the said objector, Leonard J. Woodruff, was properly and personally served with summons. Furthermore, even if not validly served with process, by entering into said stipulation and by participating in the hearing, Woodruff waived such service and voluntarily submitted himself to the jurisdiction of the Court. Said judgment is now final and objector is estopped thereby to question said matter herein.

That thereafter, on the 11th day of September, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, the trustee herein, P. M. Jackson, together with the said objector, Leonard J. Woodruff, filed a proceeding to have the said judgment upon which this claimant's claim is predicated vacated and set aside, because no personal service of summons was had upon the defendant, the said Leonard J. Woodruff. Thereafter on the 26th day of September, 1939, judgment was duly given and made by said court, deciding the matter against the said P. M. Jackson, the trustee in bankruptcy herein, and the said Leonard J. Woodruff, the objector herein.

Thereafter the said P. M. Jackson and the said Leonard J. Woodruff appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District. That on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth District, in a decision rendered on that day, and mandate filed on the 31st day of May, 1940, decided that the said Leonard J. Woodruff, the objector herein, was regularly and lawfully personally served with summons in said action. That said judgment is final.

That the said objector is therefore estopped to again reassert the same matter.

XII.

110 Specifically answering Paragraph (C) claimant says that on the 11th day of September, 1939, at Los Angeles, California, the trustee herein, P. M. Jackson, together with the said objector, Leonard J. Woodruff, filed a proceeding in the District Court of the United States for the

Southern District of California, Central Division, Cause No. 7256-C, to have the said judgment, upon which this claimant's claim is predicated, vacated and set aside because the complaint in the said action does not state a cause of action under the laws of the State of California, and that said complaint showed upon its face that it was barred by the statute of limitations of the State of California before the filing thereof, which is the same matter as set up herein in said Paragraph (C). After a hearing on the 26th day of September, 1939, judgment was duly given and made by said court deciding the said matter against the said P. M. Jackson, the trustee in bankruptcy herein, and the said Leonard J. Woodruff, the objector herein.

Thereafter the said trustee, P. M. Jackson, and the said objector, Leonard J. Woodruff, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District. That on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth District rendered its decision affirming the said judgment of the District Court of the United States for the Southern District of California, Central Division. Mandate was filed on the 31st day of May, 1940. Said judgment is final.

That the said objector is therefore estopped by res adjudicata to again reassert the same matter herein.

XIII.

Specifically answering Paragraph (D) claimant says that the said judgment is not void on its face for the reasons stated that the complaint was based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered. Claimant says that the said judgment is not void on its face as alleged by the said objector. That the same matter was raised before the said District Court of the United States, Southern District, Central Division, and decided against objector in Cause No. 7256-C. Thereafter it was presented upon appeal to the said Circuit Court of Appeals, Ninth Circuit where the judgment of the lower court was affirmed, Cause No. 9356.

111

XIV.

Specifically answering Paragraph (E) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (E) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (E). Said facts were presented and after due consideration by the said Court was decided against
112 them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day

of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (E), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XV.

Specifically answering Paragraph (F) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (F) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res Adjudicata of all the said matter, and said objector is estopped thereby from again pre-
113 senting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding

to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (F). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (F), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to
114 every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVI.

Specifically answering Paragraph (G) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256 C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (G) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same

herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (G). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

115 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (G), which is the same as was decided against him by the said prior judgments in the said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVII.

Specifically answering Paragraph (H) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (H) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles,
116 California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (H). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector,

Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (H), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVIII.

Specifically answering Paragraph (I) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (I) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter,

117 and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection

(1). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objection herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (I), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is re adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XIX.

118 Specificially answering Paragraph (J) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (J) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard

J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (J). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (J), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XX.

119 Specificially answering Paragraph (K) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then

pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (K) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (K). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against said P. M. Jackson, trustee in bankruptcy, and said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

120 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (K), which is the same as was decided against him by the

said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XXI.

Specifically answering Paragraph (L) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (L) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimants complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

121 Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (L). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by

the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (L), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XXII.

This claimant says that the objector litigated substantially all of the matters that are the subject of his objections in Cause No. 7256-C in the District Court of the United States, Southern District of California, Central Division, and upon which judgments were rendered in favor of claimant and against the said objector on the 20th day of March, 1939; the 8th day of June, 1939, and the 29th day of June, 1939, also judgment rendered against the said objector and the trustee in bankruptcy herein, P. M. Jackson, on the 26th day of September, 1939, and in addition thereto on an appeal by the said P. M. Jackson and Leonard J. Woodruff to the United States Circuit Court of Appeals for the Ninth Circuit, and judgment of said court in favor of your claimant, M. E. Heiser, in which it includes the said parties and those in privy with them, not only as to every matter which was offered and received to sustain or defeat the matter, but as to any other matter which might have been offered for that purpose. The said judgments estopped them not only as to

every ground of recovery or defense actually presented, but also as to every ground which might have been presented.

122 By said objections the said objector, Leonard J. Woodruff, asks this court to retry the said cause of action which has heretofore been finally adjudged by the District Court of the United States for the Southern District of California, Central Division, and on appeal by the United States Circuit Court of Appeals for the Ninth District upon attack by the said P. M. Jackson, trustee, and the objector herein, Leonard J. Woodruff, the bankrupt.

Wherefore, claimant asks that his claim on file herein be allowed.

M. E. HEISER, Claimant.

MITCHELL S. MEYBERG,
LEONARD J. MEYBERG,
Attorneys for Claimant.

[Verified.]

Filed Sep. 23, 1940. Geo. F. Clark, Referee.

Amendments to the Objections of Willie May Woodruff to the Claim of M. E. Heiser

123 Comes now the objector, Willie May Woodruff, and leave of the Court being had and obtained, files this amendment to her objections to the claim of M. E. Heiser, and for such amendment and in addition to all of the matters and things alleged and set out in her original objections to said claim, alleges and says that the claim of M. E. Heiser filed herein should be denied or substantially reduced in amount on account of the following matters and things, to-wit:

The claimant, M. E. Heiser, was guilty of fraud upon the Court and upon the parties to the action, and guilty of perjury in the obtaining of said judgment, in that, he alleged in his complaint, and apparently testified under oath in the District Court of the United States, in and for the Southern District of California, on the 20th day of March, 1939, that in June and July, 1928, he was possessed of twelve hundred (1200) ounces of blue sapphires rough; one thousand (1000)

ounces of star sapphires rough; twelve hundred (1200) ounces of opals, black and light, rough; one thousand (1000) ounces of zircons rough, and one (1) piece of jade, 28 pounds, which property he alleged was of a value in excess of One Hundred Thirty Thousand Dollars ($130,000.00), and that he deposited said gems in the United States National Bank, at Eighth and Spring Streets, Los Angeles, California, whereas, in truth and in fact the said M. E. Heiser was not possessed of said gems above described at the time, and did not deposit the same in said bank, and this objector is now prepared to prove, in support of her objections, by competent evidence that the said M. E. Heiser did not possess said gems at said time and did not deposit the same, or gems of like quantity and value, in said bank, as alleged in his complaint and as testified to by him in order to obtain the judgment which he obtained against the debtor herein.

124 The said M. E. Heiser filed his claim, in the matter of the bankruptcy of the Golden State Gem Company of California, for the gems or stones which he did deposit in the United States National Bank, at Eighth and Spring Streets, Los Angeles, California, and said claim was fixed in amount at Thirty Thousand Dollars ($30,000.00), which at the time of the filing of the claim was alleged to be the true value of the gems so deposited in said bank.

Thereafter, the said M. E. Heiser testified, in support of said claim in bankruptcy, that certain of the property which he deposited in said bank, of the value of Sixty-nine Thousand Dollars ($69,000.00), was omitted from said claim by inadvertance, and that as a matter of fact the value of said property so deposited in said bank and as thus claimed by the said M. E. Heiser under oath was Ninety-nine Thousand Dollars ($99,000.00).

Thereafter, the said M. E. Heiser testified in a suit which he brought against one Maude Lollar Graves, in the Superior Court of the State of California, in and for the City and County of San Francisco, and being case No. 238348 in said court, and in which was involved the question as to the value of said property described in paragraph 6 of the complaint of said Heiser in said suit against the debtor herein,

wherein he obtained judgment, that said gems were worth approximately One Hundred and Three Thousand Dollars ($103,000.00); that said Heiser testified in the action in which he obtained his judgment that the same were worth in excess of One Hundred Eighty Thousand Dollars ($180,000.00); that the value so placed upon said stones by the said M. E. Heiser varied from Thirty Thousand Dollars ($30,000.00) to One Hundred Eighty Thousand Dollars ($180,000.00), the value so fixed being the value as of the date of the alleged conversion. This objector alleges that in truth and in fact the gems or stones which were deposited by the said M. E. Heiser in the United States National Bank, Eighth and Spring Streets, Los Angeles, California, as alleged in said complaint, upon which his judgment is based (the title to which afterwards passed to the Golden State Gem Company) was never at any time as much as Thirty Thousand Dollars ($30,000.00), and if the said M. E. Heiser has a meritorious claim against the debtor herein it does not exceed Thirty Thousand Dollars ($30,000.00) in amount.

125 Wherefore, this objecting creditor prays that the claim of said M. E. Heiser be disallowed, but that if the same is not disallowed, it be reduced to conform to the value of the property which the said M. E. Heiser possessed, and that the amount of the judgment upon which the claim is based, which is fictitious and unwarranted, and which was secured upon perjured testimony given by the claimant, be disallowed and disapproved, and that she have such other and further relief to which she may be and appear entitled.

WILLIE MAY WOODRUFF,
Objector.
W. W. POTTER,
Attorneys for the Objector
Willie May Woodruff.

Subscribed and sworn to before me this the 31st day of December, 1940, by Willie May Woodruff, to the best of her belief. Leona Dettia, Notary Public in and for Los Angeles County California. My commission expires August 20, 1941. (Seal).

Filed January 30, 1941, Geo. F. Clark, Referee.

Amendments to the Objections of Ida Belle Woodruff to the Claim of M. E. Heiser.

126 Comes now the objector, Ida Belle Woodruff, and leave of the court being had and obtained, files this amendment to her objections to the claim of M. E. Heiser, and for such amendment and in *adition* to all of the matters and things alleged and set out in her original objections to said claim, alleges and says that the claim of M. E. Heiser filed herein should be denied or substantially reduced in amount on account of the following matters and things, to-wit:

The claimant, M. E. Heiser, was guilty of fraud upon the court and upon the parties to the action, and guilty of perjury in the obtaining of said judgment, in that, he alleged in his complaint, and apparently testified under oath in the District Court of the United States in and for the southern District of California, on the 20th day of March, 1939, that in June and July, 1928, he was possessed of twelve hundred (1200) ounces of blue sapphires rough; one thousand (1000) ounces of star sapphires rough; twelve hundred (1200) ounces of opals, black and light, rough; one thousand (1000) ounces of zircons rough, and one (1) piece of jade, 28 pounds, which property he alleged was of a value in excess of One Hundred Thirty Thousand Dollars (130,000) and that he deposited said gems in the United States National Bank, at *Eigth* and Spring Streets, Los Angeles, California, whereas, in truth and in fact the said M. E. Heiser was not possessed of said gems above described at the time, and did not deposit the same in said bank, and this objector is now prepared to prove, in support of her objections, by competent evidence that the said M. E. Heiser did not possess said gems at said time and did not deposit the same, or gems of like quantity and value, in said bank, as alleged in his complaint and as testified to by him in order to obtain the judgment which he obtained against the debtor herein.

The said M. E. Heiser filed his claim, in the matter of the bankruptcy of the Golden State Gem Company of California, for the gems or stones which he did deposit in the United States National Bank, at Eighth and Spring Streets, Los

Angeles, California, and said claim was fixed in
127 amount at Thirty Thousand Dollars (30,000), which at the time of the filing of the claim was alleged to be the true value of the gems so deposited in said bank.

Thereafter, the said M. E. Heiser testified, in support of said claim in bankruptcy, that certain of the property which he deposited in said bank, of the value of Sixty-nine Thousand Dollars (69,000) was omitted from said claim by inadvertence, and that as a matter of fact the value of said property so deposited in said bank and as thus claimed by the said M. E. Heiser under oath was Ninety-nine Thousand Dollars (99,000).

Thereafter, the said M. E. Heiser testified in a suit which he brought against one Maude Lollar Graves, in the Superior Court of the State of California, in and for the City and County of San Francisco, and being case no. 238348 in said court, and in which was involved the question as to the value of said property described in paragraph 6 of the complaint of said Heiser in said suit against the debtor herein, wherein he obtained judgment, that said gems were worth approximately One Hundred and Three Thousand Dollars (103,000); that said Heiser testified in the action in which he obtained his judgment, that the same were worth in excess of One Hundred Eighty Thousand Dollars (180,000); that the value so placed upon said stones by the said M. E. Heiser varied from Thirty Thousand Dollars (30,000) to One Hundred Eighty Thousand Dollars (180,000), the value so fixed being the value as of the date of the alleged conversion. This objector alleges that in truth and in fact the gems or stones which were deposited by the said M. E. Heiser in the United States National Bank, Eighth and Spring Streets, Los Angeles, California, as alleged in said complaint, upon which his judgment is based (the title to which afterwards passed to the Golden State Gem Company) was never at any time as much as Thirty Thousand Dollars (30,000), and if the said M. E. Heiser has a meritorious claim against the debtor herein it does not exceed Thirty Thousand Dollars (30,000) in amount.

Wherefore, this objecting creditor prays that the claim of said M. E. Heiser be disallowed, but that if the same is

not disallowed, it be reduced to conform to the value of the property which the said M. E. Heiser possessed, and that the amount of the judgment upon which the claim is
128 based, which is fictitious and unwarranted, and which was secured upon perjured testimony given by the claimant, be disallowed and disapproved, and that she have such other and further relief to which she may be and appear entitled.

W. W. Potter, Attorney for Ida Belle Woodruff, Objector.

[Verified.]

Filed Jan. 30, 1941. Geo. F. Clark, Referee.

Order Disallowing Unsecured Claim of M. E. Heiser.

129 At McAlester, in said District, on the 4th day of October, 1943.

Upon consideration of the unsecured claim of M. E. Heiser, objections thereto, evidence, and brief of counsel.

It Is Ordered that the unsecured claim of M. E. Heiser, filed against the estate of the above named bankrupt, be, and the same is, hereby disallowed.

Geo. F. Clark,
Referee in Bankruptcy.

Filed Oct. 4, 1943. Geo. F. Clark, Referee.

Order Allowing Unsecured Claim of Wille May Woodruff.

130 At McAlester, in said District, on the 4th day of October, 1943.

Upon consideration of the unsecured claim of Wille May Woodruff, objections thereto, evidence and briefs of counsel,

It is ordered that the unsecured claim of Wille May Woodruff, filed against the estate of the above named bankrupt, be, and the same is hereby, allowed for the sum of $812.-176.15, being principal sum of $477.750.68, with interest

thereon at 7% per annum from 1929 to 1939, amounting to $334,425.47.

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Oct. 4, 1943. Geo. F. Clark, Referee.

Petition by M. E. Heiser for the Review of the Order of the Honorable Geo. Clark, Referee in Bankruptcy, Disallowing the Judgment Claim of M. E. Heiser, and Assignments of Error.

131 Comes now M. E. Heiser, a creditor herein, having on file herein a claim based upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and affirmed by the Circuit Court of the United States, in and for the Ninth Circuit in 111 Fed. (2) p. 310, entitled P. M. Jackson, Trustee, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee, and petitions for a review of the order of the Honorable Geo. Clark as Referee in Bankruptcy herein, filed herein on October 4, 1943, disallowing the claim of M. E. Heiser, said order being the only order made by the said Honorable Referee disallowing the claim of M. E. Heiser, and being in words, figures, letters and form as follows, to wit:

[The order appears at page 127.]

132 The undersigned M. E. Heiser, petitioner herein, feeling aggrieved at said order, petitions for review of same by the District Court of the United States for the Eastern District of Oklahoma and by a District Judge thereof. Your petitioner hereby assigns and designates as error committed by said Honorable Referee in Bankruptcy, and the said order complained of is hereby designated as erroneous, among other things, for the following reasons and in the following particulars:

(a) That the Honorable Referee in Bankruptcy is without jurisdiction to retry the case on the merits, to wit: The case out of which the judgment of the District Court of the

United States for the Southern District of California, Central Division, had entered its judgment in the matter of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, et al., defendants, which judgment had been appealed by P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a bankrupt, the bankrupt herein, and by Leonard J. Woodruff the bankrupt herein to the United States Circuit Court of Appeals for the Ninth Circuit, and which judgment of the said District Court of the United States had been therein by the said Circuit Court of Appeals of the United States, for the Ninth Circuit, affirmed.

(b) That the creditors who object to the claim of M. E. Heiser were bound by the result of the acts of their Trustee P. M. Jackson who, pursuant to the request of all creditors other than M. E. Heiser and under order of the Honorable Geo. Clark, Referee in Bankruptcy, had heretofore tested the sufficiency of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, as given in the District Court of the United States for the Southern District of California, Central Division, on appeal and by equity attack in the United States Circuit Court of Appeals for the Ninth Circuit and were bound by the result of such proceeding.

133 (c) That the objectors, and each of them, were bound, and the Referee was bound by the rule of law that it is not possible to make a collateral check on a final judgment which was res adjudicata of the facts and of the law against the Bankrupt and the Trustee after said proceedings, and that the Referee in Bankruptcy and this Court could not legally attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter after that judgment had been unsuccessfully attacked first by a review taken therefrom by the Bankrupt and second, by a review taken by the Trustee in Bankruptcy herein, P. M. Jackson, as Trustee of the Bankrupt Estate of Leonard J. Woodruff, upon authority of the Honorable Referee herein and by his order granting the petition of said Trustee and all of the creditors of said Bankrupt Estate excepting M. E. Heiser, and after the institution and maintenance and determination of an independent equitable pro-

ceeding attacking said judgment, which independent equity attack had been fully determined by the said Circuit Court of Appeals (111 Fed. (2) p. 310) was a final judgment prior to the trial of the objections now made to the claim of M. E. Heiser.

(d) That in disallowing the claim of M. E. Heiser, the Honorable Referee in Bankruptcy refused to apply the law, to-wit: That the judgment which was the basis of the claim of M. E. Heiser as filed herein, was a final judgment and adjudicated fully and finally the matters and things which were the subject matter of the case in which the judgment was rendered, and that it was beyond the legal power and authority of the Referee in Bankruptcy to reverse or review, modify, order or change the said judgment as rendered by the District Court of the United States for the Southern District of California, and as affirmed on review by the United States Circuit Court of Appeals for the Ninth Circuit (111 Fed. (2) p. 210).

134 (e) That the Referee in Bankruptcy in making the order disallowing the claim of M. E. Heiser erred in that he did not hold that the bankrupt Leonard J. Woodruff and his Trustee in Bankruptcy, P. M. Jackson, and each of them, were estopped by the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of M. E. Heiser vs. Leonard J. Woodruff, Bankrupt, known in the said United States Circuit Court of Appeals for the Ninth Circuit as P. M. Jackson, as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee and Respondent (111 Fed. (2) p. 310), in that the said Leonard J. Woodruff and P. M. Jackson as Trustee in Bankruptcy herein filed and participated in said appeal and were bound by the result of said litigation, not only in the United States Circuit Court of Appeals for the Ninth Circuit but also by the final judgment by the United States District Court for the Southern District of California in the said case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, et als, Defendants.

(f) That the said Honorable Referee in Bankruptcy erred in refusing to recognize and apply the rule of law that "full faith and credit shall be given by every state to the

laws of every other state," and the application of such law as heretofore decreed to apply in the District Courts of the United States. That the said Honorable Referee in Bankruptcy erred in not applying the rule of full faith and credit to the final judgment of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant, which judgment as affirmed, and appealed, by the United States Circuit Court of Appeals for the Ninth Circuit was the basis of the claim as filed herein as the claim of M. E. Heiser, and was the basis of the supplement to the claim of M. E. Heiser filed herein.

135 (g) That the alleged creditors who filed the objections herein, upon which the order is sought by this petition to be reviewed, are not parties, nor any of them parties, who may legally and properly object to the claim of M. E. Heiser, petitioner herein, there being in this case a Trustee duly elected and qualified who has heretofore made the same objections unsuccessfully after authorization and order of the Honorable Referee herein that he do so, such order being based upon petition of such creditors for such order, the rule of law being that only when a Trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim, under such circumstances can an order be made permitting a creditor to act independently, but only when the Trustee himself has not acted. In this case the Trustee selected the forum to attack the said Heiser judgment to-wit: The District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States in and for the Ninth Circuit, and has done so upon the written application of the creditors now herein objecting, upon whose objections the order herein sought to be reviewed was made and after an order of this Honorable Referee had been duly made upon such written application of the said creditors, permitting and instructing the said Trustee herein to go to California and attack the said Heiser judgment in each of the said forums.

(h) That the objecting creditors herein and each of them, are bound by the result of the acts of the said Trustee P. M. Jackson who acted upon the order of the Honorable

Referee herein made upon the petition of such creditors for such order, such Trustee P. M. Jackson having already objected and having heretofore attested the sufficiency of said Heiser judgment in the said forums so designated by the said Honorable Referee herein in his order made granting the petition of such creditors; that the said Trustee P. M. Jackson has heretofore attacked the Heiser judgment in an independent equity proceeding and in a review by the said Trustee P. M. Jackson on appeal, pursuant to the order of the said Honorable Referee made granting the petition of each of said creditors therefor and the Circuit Court of Appeals of the United States in and for the Ninth Circuit having so held.

136 (i) That the objecting creditors are estopped by the said acts of the said Trustee P. M. Jackson under said circumstances, to-wit: estopped by judgment.

(j) That the objections by the objecting creditors herein constituted a collateral attack upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States for the Ninth Circuit, which judgment is res adjudicata of the facts and of the law. In support of such objections in respect to the law, petitioner offers and refers to 28 U. S. Code Amended 531, and the cases Judiciously interpreting that section.

(k) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is contrary to law.

(l) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is against the evidence.

(m) That the Honorable Geo. Clark, Referee, erred in over-ruling the objections of claimant M. E. Heiser to the introduction of any evidence in support of any and all of the objecting creditors' objections for the reasons designated herein and as set out in the transcript and on file in said proceeding.

137 The petitioning claimant M. E. Heiser hereby requests that the Referee prepare a certificate for

review and that there be forwarded with said certificate for review to said District Court, and accompanying it and filed by the Referee, all of the evidence, documentary and otherwise, offered in support of, and in objection to, said claim, and the record of all such proceedings including depositions introduced by any of the parties; that there be transmitted with the said Referee's certificate for review the original claim of M. E. Heiser and the supplement thereto, together with exemplified and certified copies of the judgment of the District Court of the United States for the Southern District of California, Central Division, in the case of Heiser, Plaintiff, vs. Leonard J. Woodruff, et al, Defendants, No. 7256-C, the opinion of the United States Circuit Court of Appeals for the Ninth Circuit, No. 9356, which affirms the judgment aforesaid on review, the supplement to the claim of M. E. Heiser as filed by the petitioner herein with said supporting documents, to-wit: the certified and exemplified copies of the judgment of the United States District Court, Southern District of California, Central Division, in the said case of M. E. Heiser vs. Leonard J. Woodruff, et al, No. 7256-C, and the certified and exemplified copy of the judgment of the United States Circuit Court of Appeals on review of the aforesaid judgment, No. 9356; that the court make a summary of the evidence introduced in support of the claim of M. E. Heiser, including the Reporter's Transcript of such testimony other than exhibits; that the original exhibits be filed with the Clerk of the United States District Court for the Eastern District of Oklahoma at the time of, and as a part of, the Referee's certificate on review; that accompanying such documents the Honorable Referee include the applications of the objecting creditors and of the Trustee herein for authority to institute legal action to vacate and set aside judgment of M. E. Heiser against the Bankrupt Leonard J. Woodruff, and for authority to employ counsel to represent said Bankrupt in said matter, and the application of the objecting creditors, other than M. E. Heiser, requesting that the Honorable Referee herein direct the Trustee to take said legal steps, and the order of the Honorable Referee herein authorizing and directing the Trustee to institute legal action before the court at Los Angeles, California, to vacate and

set aside the judgment of M. E. Heiser against the said bankrupt, such order being dated and filed on or about August 23, 1939, and the application of the Trustee herein and of the objecting creditors herein requesting that the Honorable Referee herein direct the Trustee to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment in the case of M. E. Heiser vs. Leonard J. Woodruff, et al, No. 7256-C, and the judgment of said court in the independent action filed by said Trustee to vacate, set aside, and void the said judgment, and to employ counsel therefor and to incur expenses incident thereto, and the order of the Honorable Referee herein on file herein granting such applications and authorizing and directing the Trustee to proceed to institute such appeal to the United States Circuit Court of Appeal in and for the Ninth Circuit.

138 The undersigned M. E. Heiser hereby tenders to the Referee, and offers to pay in cash forthwith, such sums as may be necessary to prepare such documents, and to prepare the Referee's certificate for review, and to prepare the Reporter's Transcript and to transmit the same to the Clerk of the District Court for the Eastern District of Oklahoma. Said amount being unknown and undetermined at this time, the undersigned tenders and deposits for the Referee's use and for the payment of such fees as the Referee may be entitled, the sum of $30.00 as requested in the letter of the Referee dated October 1, 1943, and offers to pay such other sums as may be properly found to be payable to complete this record as proposed by the Referee in said letter.

Wherefore, petitioner prays that the order of the Referee herein disallowing the claim of M. E. Heiser be certified for review by the District Court of the United States for the Eastern District of Oklahoma within the time allowed by law.

MITCHELL S. MEYBERG,
LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
T. G. GIBSON.

By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

M. E. HEISER, Petitioner.
By M. S. MEYBERG.

Assignment of Errors by Petitioner on Review, M. E. Heiser. (On Review of the Order Disallowing the Claim of M. E. Heiser, a Judgment Creditor).

139 Comes now M. E. Heiser, petitioner on review, and files this, his assignment of errors on review of the order of the Referee hereinabove referred to, to-wit:

(a) That the Honorable Referee in Bankruptcy is without jurisdiction to retry the case on the merits, to-wit: The case out of which the judgment of the District Court of the United States for the Southern District of California, Central Division, had entered its judgment in the matter of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, et al., defendants, which judgment had been appealed by P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt, the bankrupt herein, and by Leonard J. Woodruff, the bankrupt herein to the United States Circuit Court of Appeals for the Ninth Circuit, and which judgment of the said District Court of the United States had been therein by the said Circuit Court of Appeals of the United States, for the Ninth Circuit, affirmed.

(b) That creditors who object to the claim of M. E. Heiser were bound by the result of the acts of their Trustee P. M. Jackson who, pursuant to the request of all creditors other than M. E. Heiser and under order of the Honorable Geo. Clark, Referee in Bankruptcy, had heretofore tested the sufficiency of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, as given in the District Court of the United States for the Southern District of California, Central Division, on appeal and by equity attack in the United States Circuit Court of Appeals for the Ninth Circuit and were bound by the result of such proceeding.

140 (c) That the objectors, and each of them, were bound, and the Referee was bound by the rule of law that it is not possible to make a collateral check on a final

judgment which was res adjudicata of the facts and of the law against the Bankrupt and the Trustee after said proceedings, and that the Referee in Bankruptcy and this Court could not legally attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter after that judgment had been unsuccessfully attacked first by a review taken therefrom by the Bankrupt and second, by a review taken by the Trustee in Bankruptcy herein, P. M. Jackson, as Trustee of the Bankrupt Estate of Leonard Woodruff, upon authority of the Honorable Referee herein and by his order granting the petition of said Trustee and all of the creditors of said Bankrupt Estate excepting M. E. Heiser, and after the institution and maintenance and determination of an independent equitable proceeding attacking said judgment, which, independent equity attack had been fully determined by the said Circuit Court of Appeals (111 Fed.(2) p. 310) was a final judgment prior to the trial of the objections now made to the claim of M. E. Heiser.

(d) That in disallowing the claim of M. E. Heiser, the Honorable Referee in Bankruptcy refused to apply the law, to-wit: That the judgment which was the basis of the claim of M. E. Heiser as filed herein, was a final judgment and adjudicated fully and finally the matters and things which were the subject matter of the case in which the judgment was rendered, and that it was beyond the legal power and authority of the Referee in Bankruptcy to reverse or review, modify, order or change the said judgment as rendered by the District Court of the United States for the Southern District of California, and as affirmed on review by the United States Circuit Court of Appeals for the Ninth Circuit (111 Fed.(2) p. 310).

(e) That the Referee in Bankruptcy in making the order disallowing the claim of M. E. Heiser erred in that he did not hold that the bankrupt Leonard J. Woodruff and his Trustee in Bankruptcy, P. M. Jackson, and each of them, were estopped by the judgment of the United States
141 Circuit Court of Appeals for the Ninth Circuit, in the matter of M. E. Heiser vs. Leonard J. Woodruff, Bankrupt, known in the said United States Circuit Court of Appeals for the Ninth Circuit as P. M. Jackson, as Trustee

in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee and Respondent (111 Fed.(2) p. 310), in that the said Leonard J. Woodruff and P. M. Jackson as Trustee in Bankruptcy herein filed and participated in said appeal and were bound by the result of said litigation, not only in the United States Circuit Court of Appeals for the Ninth Circuit *ubt* also by the final judgment of the United States District Court for the Southern District of California in the said case of M. E. Heiser, Plaintiff vs. Leonard J. Woodruff, et al., Defendants.

(f) That the said Honorable Referee in Bankruptcy erred in refusing to recognize and apply the rule of law that "full faith and credit shall be given by every state to the laws of every other state," and the application of such law as heretofore decreed to apply in the District Court of the United States. That the said Honorable Referee in Bankruptcy erred in not applying the rule of full faith and credit to the final judgment of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant, which judgment as affirmed, and appealed, by the United States Circuit Court of Appeals for the Ninth Circuit was the basis of the claim as filed herein as the claim of M. E. Heiser, and was the basis of the supplement to the claim of M. E. Heiser filed herein.

(g) That the alleged creditors who filed the objections herein, upon which the order is sought by this petition to be reviewed, are not parties, nor any of them parties, who may legally and properly object to the claim of M. E. Heiser, petitioner herein, there being in this case a Trustee duly elected and qualified who has heretofore made the same objections unsuccessfully after authorization and order of the Honorable Referee herein that he do so, such order

142 being based upon petition of such creditors for such order, the rule of law being that only when a Trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim, under such circumstances can an order be made permitting a creditor to act independently, but only when the Trustee himself has not acted. In this case the Trustee selected the forum to attack the said Heiser judgment to-wit: the District Court of the United States in and for the Southern District of Califor-

nia, Central Division, and the Circuit Court of Appeals of the United States in and for the Ninth Circuit, and has done so upon the written application of the creditors now herein objecting, upon whose objections the order herein sought to be reviewed was made and after an order of this Honorable Referee had been duly made upon such written application of the said creditors, permitting and instructing the said Trustee herein to go to California and attack the said Heiser judgment in each of the said forums.

(h) That the objecting creditors herein and each of them, are bound by the result of the acts of the said Trustee P. M. Jackson who acted upon the order of the Honorable Referee herein made upon the petition of such creditors for such order, such Trustee P. M. Jackson having already objected and having heretofore attested the sufficiency of said Heiser judgment in the said forums so designated by the said Honorable Referee herein in his order made granting the petition of such creditors; that the said Trustee P. M. Jackson has heretofore attacked the Heiser judgment in an independent equity proceeding and in a review by the said Trustee P. M. Jackson on appeal, pursuant to the order of the said Honorable Referee made granting the petition of each of said creditors therefor and the Circuit Court of Appeals of the United States in and for the Ninth Circuit having so held.

143 (i) That the objecting creditors are estopped by the said acts of the said Trustee P. M. Jackson under said circumstances, to-wit: estopped by judgment.

(j) That the objections by the objecting creditors herein constituted a collateral attack upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States for the Ninth Circuit, which judgment is res adjudicata of the facts and of the law. In support of such objections in respect to the law, petitioner offers and refers to 28 U. S. Code Amended 531, and the cases judiciously interpreting that section.

(k) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is contrary to law.

(l) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is against the evidence.

(m) That the Referee erred in overruling the objections of the claimant M. E. Heiser, to the introduction of any evidence in support of the objecting creditors' objections and erred in permitting evidence which constituted the retrial of the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, et. al., as heretofore tried in the United States District Court for the Southern District of California and as affirmed on appeal by the United States Circuit Court of Appeals for the Tenth Circuit and the fraud issues of which had attempted to be raised in an independent equity proceeding instituted by Trustee P. M. Jackson at the special instance and request of the objecting creditors herein, to-wit: all creditors with claims on file other than M. E. Heiser, which objection was in words, letters, figures and form as follows:

"By Mr. Turnbull:

The claimant, M. E. Heiser, objects to the introduction of any evidence in support of any and all of the objecting creditors' objections:

144 First, that the said alleged creditors are not parties, nor are any of them parties who may legally and properly object to the claim of the creditor, Heiser, there being in this case a trustee duly elected and qualified who has heretofore made the same objections unsuccessfully. The rule of law being that only when a trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim can an order be made permitting a creditor to act independently, and then only when the trustee himself has not acted. In this case the trustee has selected the forum to attack the Heiser judgment and has done so upon the written application of the creditors now here objecting after an order of this Court duly made permitting and instructing the trustee to go to California and attack the Heiser judgment.

Second, That the creditors now objecting are bound by the result of the acts of the trustee, Jackson, who has already objected and has heretofore tested the sufficiency of the Heiser judgment; that said trustee, Jackson, has attacked

the Heiser judgment in an independent equity proceeding, and the Ninth Circuit Court has so held.

Third, That the objecting creditors here are estopped by the acts of their trustee, Jackson, to-wit: an estoppel by judgment.

Fourth, That the objections by the objecting creditors here are a collateral attack upon a final judgment, which is res adjudicata of the facts and of the law. In support of our objection in respect to the law, we offer and refer to 28 U. U. Code, amended, 531, and the cases judiciously interpreting that section.

Fifth, That full faith and credit is under the law to be given by this Court to the final judgments and decrees of other District Courts of the United States, to-wit: Courts of equal jurisdiction and of equal dignity. That the claimant M. E. Heiser objects to the introduction of any evidence in support of any objection made by the bankrupt, or the trustee or any other person on the ground that the record now shows that the matters involved in the Heiser
145 claim, and the objections thereto are res adjudicata; that the objectors are estopped by the judgment, First, by the judgment in favor of Heiser and against the bankrupt, Woodruff, and Second by the judgment as unsuccessfully attacked and so held by the United States Circuit Court of Appeals in the Ninth Circuit in the matter entitled, Jackson, Trustee vs. Heiser, a certified copy of which is now in evidence; also on the ground that full faith and credit must be given by this Court to the final judgment of the United States District Court for the Southern District of California, and the judgments and decrees of the Ninth Circuit in this matter; further on the ground that there is no authority in the bankrupt to object after his trustee has objected unsuccessfully; further, on the ground that the present offer of proof by the objectors is a collateral attack upon a final judgment, as has been decreed by the Tenth Circuit stated in the opinion of Judge Sam Bratton, as heretofore referred to and cited. That this Court cannot attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter, which is res adjudicata, and which is plead in this case."

That no written findings of fact or written conclusions of law have been made or filed relating to or upon which the order complained of is based.

LEONARD J. MEYBERG,
MITCHELL S. MEYBERG,
T. G. GIBSON,
RUPERT B. TURNBULL,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Filed Oct. 14, 1943. Geo. F. Clark, Referee.

Petition for Review of the Order of the Referee Allowing the Claim of Willie May Woodruff for $812,176.15, and Assignments of Error.

146 Comes now M. E. Heiser, a creditor herein, and files this, his petition for the review of the order of the Honorable Geo. Clark, Referee in Bankruptcy, allowing the claim of Willie May Woodruff for $812,176.15, and all thereof. Your petitioner M. E. Heiser has heretofore filed in this proceeding objections to the allowance of the claim of Willie May Woodruff and after trial thereon the Referee has, in the course of the proceedings, now made his Order overruling said objections and allowing said claim of Willie May Woodruff in its entirety, with interest for ten years at 7% per annum.

The undersigned, M. E. Heiser, feeling aggrieved at said order, petitions for review of said Referee's order by the District Court of the United States for the Eastern District of Oklahoma and by a judge thereof. Said order sought to be reviewed is that order of the Honorable Geo. Clark, Referee in Bankruptcy, being the only order, allowing the claim of Willie May Woodruff, filed herein on October 4, 1943, and which order is in words, figures, letters and form as follows, to-wit:

[The order appears at page 127.]

147 Your petitioner hereby assigns and designates as error committed by the said Honorable Referee in Bankruptcy and as grounds for seeking said review of said

order, the following errors, which he alleges were committed by the said Referee in Bankruptcy:

(a) The order complained of above is contrary to the evidence in that no trust was ever proved to exist as between the bankrupt Leonard J. Woodruff and the claimant Willie May Woodruff, the wife of said bankrupt, and no trust in fact existed.

(b) That there was no indebtedness existing at the date of the bankruptcy as between Leonard J. Woodruff, the bankrupt, and his wife, the claimant Willie May Woodruff.

(c) That said Willie May Woodruff waived any right in and to any property, real and personal, which she might have claimed to be her own as distinguished between that of her husband, the bankrupt Leonard J. Woodruff, when funds were used to pay the claim of the United States Government Internal Revenue Department to-wit: the delinquent income taxes of Leonard J. Woodruff.

(d) That the said order is contrary to law in that the said claim of Willie May Woodruff was at the date of bankruptcy herein, and has been at all times since, barred by the Statutes of Limitation of the State of Oklahoma and of the State of California, and each of them, and that the Referee in Bankruptcy erred in allowing said claim in the face of the Bar of the Statutes of Limitation.

(e) That the Referee erred in that he ignored the affirmative provision of the National Bankruptcy Act that no claim be allowed which is barred by the Statutes of Limitation or is barred by the Statutes of the State limiting the time within which actions may be commenced to enforce the collection of debts, and when he made an order allowing said claim when said claim was shown to have been outlawed under the Statutes of the State of California, the Statutes of Limitation of the State of Oklahoma, and each of them.

148 (f) That the said order allowing the claim is contrary to law.

(g) That the said order allowing the claim is contrary to the evidence.

Petitioner requests that the Referee prepare a certificate

tor review and that there be forwarded with said certificate for review to said District Court and accompanying it, the evidence offered in support of, and in objection to, the claim of Willie May Woodruff. That the Court forward with this certificate the claim of Willie May Woodruff, the objections of M. E. Heiser thereto, and the documentary evidence offered; that evidence be sent in the original form to the Clerk of the District Court. Petitioner requests the preparation of the Reporter's Transcript showing the oral evidence offered with reference to the claim and in support of the claim of M. E. Heiser.

The undersigned M. E. Heiser hereby tenders to the Referee and offers to pay in cash forthwith such sums as may be necessary to prepare such documents, to prepare the Referee's certificate for review, to prepare the reporter's transcript and transmit the same to the Clerk of the District Court for the Eastern District of Oklahoma. Said amount being unknown and undetermined at this time, the undersigned tenders and deposits for the Referee's use and for the payment of such fees as the Referee may be entitled, the sum of $20.00, in addition to the amount of $10.00 heretofore deposited, all as requested in letter of the Referee dated October 1, 1943, and offers to pay such other sums as may be properly found to be payable to complete this record, as proposed by the Referee in said letter.

Wherefore, petitioner prays that the order of the Referee allowing the claim of Willie May Woodruff for $812.176.15 be certified for review by the District Court of the United States for the Eastern District of Oklahoma within the time allowed by law

M. E. HEISER, Petitioner.
By MITCHEL S. MEYBERG.

MITCHEL S. MEYBERG,
LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
T. G. GIBSON,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Filed Oct. 14, 1943. Geo. F. Clark, Referee.

Assignment of Errors Made on Behalf of Petitioner M. E. Heiser, a Creditor, on Petition for Review From the Order of The Hon. Referee Clark Allowing the Claim of Willie May Woodruff for $812,176.15.

149 Comes now M. E. Heiser, creditor herein, and files this, his assignment of errors, in connection with his petition for review from the order of the Referee allowing the claim of Willie May Woodruff for $812,176.15, and assigns as error the following:

(a) The order complained of above is contrary to the evidence in that no trust was ever proved to exist as between the bankrupt Leonard J. Woodruff and the claimant Willie May Woodruff, the wife of said bankrupt, and no trust in fact existed.

(b) That there was no indebtedness existing at the date of the bankruptcy as between Leonard J. Woodruff, the bankrupt, and his wife, the claimant Willie May Woodruff.

(c) That said Willie May Woodruff waived any right in and to any property, real and personal, which she might have claimed to be her own as distinguished between that of her husband, the bankrupt Leonard J. Woodruff, when funds were used to pay the claim of the United States Government Internal Revenue Department, to-wit: the delinquent income taxes of Leonard J. Woodruff.

(d) That the said order is contrary to law in that the said claim of Willie May Woodruff was at the date of bankruptcy herein, and has been at all times since, barred by the Statutes of Limitation of the State of Oklahoma, and of the State of California, and each of them, and that the Referee in Bankruptcy erred in allowing said claim in the face of the Bar of the Statutes of Limitation.

(e) That the Referee erred in that he ignored the affirmative provision of the National Bankruptcy Act that no claim be allowed which is barred by the Statutes of Limitation or is barred by the Statutes of the State limiting the time within which actions may be commenced to enforce the collection of debts, and when he made an order al-
150 lowing said claim when said claim was shown to have been outlawed under the Statutes of the State of Cali-

fornia, the Statutes of Limitation of the State of Oklahoma, and each of them.

(f) That the said order allowing the claim is contrary to law in that no written findings of fact or written conclusions of law have been made or filed relating to or upon which the order complained of is based.

(g) That the said order allowing the claim is contrary to the evidence.

LEONARD J. MEYBERG,
MITCHELL S. MEYBERG,
T. G. GIBSON,
RUPERT B. TURNBULL,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Referee's Certificate On Review.

To the Hon. Eugene Rice, District Judge:

151 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order was made and entered allowing the unsecured claim of Wille May Woodruff for the sum of $812,176.15, being principal sum of $477,750.68 with interest thereon at 7% per annum from 1929 to 1939 amounting to $334,425.47, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser, objecting creditor.

The questions presented on this review are:

1. Was a trust created in favor of claimant, Wille May Woodruff, and, if such trust was created, was the same in effect at the time of bankruptcy?

2. Is the claim barred by the statutes of limitation?

The claim is based on an alleged trust in favor of the claimant, Wille May Woodruff, against the debtor, Leonard J. Woodruff, by reason of the claimant turning over her money to the debtor for investment for her benefit. The

claim was filed for $442,728.58 or such sums as might be found due. Objections to the claim were filed by M. E. Heiser.

The evidence consists of testimony of the claimant and the debtor memoranda made by debtor, letters, statements of brokers, paid checks, etc.

In 1919 debtor gave certain lands located in Carter County, Oklahoma, to the claimant and thereafter an oil and gas lease on said land was sold to the Carter Oil Company. The claimant, received from the sale of the oil and gas lease $45,000.00 and from oil and gas royalties the sum of $760,750.68 a total of $805,750.68 from 1919 to 1930.

Claimant testified that in 1920, when she was about 20 years old, she and her husband, the debtor, had a conversation wherein she agreed to let him handle all of her money that was coming in to buy bonds and good gilt edge securities for her and that he was not to speculate with any of her money. That the debtor, her husband, told her he would take her money if she wanted him to and invest it for her in good securities and bonds and handle it for her.

152 Debtor testified that at the time his wife gave him the first money for investment in 1920 "she said she did not know how to transact business and if I would invest the money for her that she thought that would be the best thing under the circumstances to be done."

Claimant turned over to debtor for investment practically all of the money which she received from sale of oil and gas lease and from oil and gas royalties.

The bonds and securities purchased by the debtor with the claimant's money for her benefit were retained by the debtor in his possession and none were turned over to the claimant.

The total amount realized by claimant from her property to 1930 was the sum of $805,750.68.

There was received by the claimant in cash or property the following amounts:

$ 97,000.00	residence in Los Angeles purchased by claimant, page 200 of transcript.
$ 50,000.00	house furnishings for above residence, page 200 of transcript.
$ 95,000.00	real estate in Los Angeles turned over to claimant by debtor, page 99 of transcript.
$ 50,000.00	cash turned over to claimant by debtor, page 150 of transcript.
$ 36,000.00	household expenses, $300.00 per month, ten years, page 201 of transcript.
$328,000.00	

The $328,000.00 deducted from the $805,750.68, leaves $477,750.68, which amount plus interest thereon at 7% per annum from 1929 to 1939 (10 years) amounting to $334,425.47, totals $812,176.15, the amount for which the claim was allowed.

Claimant testified that debtor in 1935 paid her $2,000.00 in cash and in 1936 paid her taxes amounting to $820.75. These items are not included above as same are apparently included in the $50,000.00 cash above set forth, which debtor stated was maximum amount cash turned over by him to claimant.

153 From 1920 to latter part of 1929 the debtor purchased with claimant's funds only bonds and non speculative stocks. In latter part of 1929 debtor began selling these bonds and stocks and using the proceeds to speculate on margin in the New York Stock Market.

By the early part of 1931 practically all of the non-speculative bonds and stocks which had been sold by debtor and the proceeds used to speculate in New York Stock Market. In December, 1931 the Government attached his account at broker's and the debtor's account was closed out. At that time he had left of claimant's non-speculative funds and stocks not to exceed $18,000.00, none of which was received by claimant.

I hand up herewith for information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs were filed with Referee prior to order allowing claim:

2. Memorandum Brief on behalf of M. E. Heiser, objecting creditor.

3. Reply to the Memorandum Brief on behalf of the objector, Heiser. Submitted by W. W. Potter.

4. Reply Brief to Memorandum filed by objector, M. E. Heiser. Submitted by Mark S. Feiler.

5. Petition for Review.

6. Copy of proof of debt of Wille May Woodruff.

7. Objections to claim of Wille May Woodruff.

8. Copy of Order Allowing Unsecured Claim of Wille May Woodruff.

9. Transcript of hearing on objections to claim of Wille May Woodruff.

10. Exhibits introduced at hearing on objections to said claim, except No. 6 original claim, copy of which is attached hereto, being Number 6 above.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Referee's Certificate On Review.

To the Hon. Eugene Rice, District Judge:

154 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order

was made disallowing the unsecured claim of M. E. Heiser, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser.

A claim was filed by said M. E. Heiser against the bankrupt estate in the sum of $278,631.71, the consideration as set forth in the proof of debtor being: "Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $184,000.00, by false pretenses and false representations through willful, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon, at the rate of 7% per annum, amounting to $113,036.71 and costs of $1,595.00 fixed by and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein, as plaintiff, and against Leonard Woodruff, bankrupt herein, as defendant, certified copy of which judgment of said United States Court is marked Exhibit 'A', is hereto annexed and referred to as a part hereof." A supplement to proof of claim of M. E. Heiser was thereafter filed.

Objections to claim of M. E. Heiser were filed by Leonard J. Woodruff, debtor, a petition for arrangement made under Chapter 11 having been filed by said Woodruff and an order made staying administration. Objections to the Heiser claim were also filed by Willie May Woodruff, Ida Belle Woodruff, Howard W. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff, Jr., creditors. Answers to the objections were filed by M. E. Heiser. Amendments to their objections to Heiser claim were filed by Ida Belle Woodruff and Willie May Woodruff.

The questions presented on this review are:

1. Does the default judgment of March 20, 1939, against Leonard Woodruff in favor of M. E. Heiser, the judgment of September 26, 1939, denying the Motions of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff, Debtor, and the decision of the Circuit Court of Appeals affirming the judgment of September 26, 1939, prevent the Bankruptcy

Court from considering the underlying claim of M. E. Heiser and allowing or disallowing in whole or in part the claim of said M. E. Heiser as filed in the bankruptcy court?

155 2. Is the evidence produced by the objectors in opposition to the claim of M. E. Heiser sufficient to defeat such claim?

Res Adjudicata.

The original suit of Heiser vs. Woodruff et al was filed in the California Court on July 11, 1935. Woodruff was served with summons on January 31, 1939 and on the 23rd day of February, 1939, the default of Woodruff was entered by the Clerk of said Court.

On March 20, 1939, the judgment which is the basis of the Heiser claim was entered and on March 29, 1939, a Motion was filed by Woodruff to set aside the default judgment, and on June 8, 1939, an order was made denying Woodruff's Motion but providing that hearing be held to determine value of the property (gems); on June 29, 1939, the value of the property was fixed at the amount fixed in the judgment.

On July 5, 1939, Woodruff filed voluntary petition and was adjudged bankrupt the same day.

On August 23, 1939, upon application of P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, an order was made by the Referee in Bankruptcy authorizing and directing said Trustee to take such action as might be necessary to have set aside the default judgment.

On the 28th day of September, 1939, the Motion of the Trustee was denied as was also the Motion of Leonard J. Woodruff. An appeal from the order of June 29, 1939, and from the order of September 26, 1939, was taken and Circuit Court of Appeals of the Ninth Circuit dismissed the appeal as to order of September 29, 1939 and affirmed the order of September 26, 1939. The decision of the Circuit Court of Appeals is reported in 111 Fed. 2d. 310.

Objectors' Exhibit DD, 7-27-42, is a certified transcript of Record, upon appeal from the District Court of the United States for the Southern District of California, Central Di-

vision, in No. 9356 United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, appellants, vs. M. E. Heiser, appellee.

156 This Transcript of Record (Ex. DD) apparently is a complete record of the proceeding in which Heiser obtained the default judgment and also the proceeding in connection with the Motion of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff.

Objectors' Ex. CC, 7-27-42, is a Reporter's Transcript of Argument on Motion to Vacate Judgment and set aside Default on September 26, 1939. This is the Motion to set aside default judgment filed by P. M. Jackson, Trustee, and Leonard Woodruff.

Objectors' Ex. RR is a transcript of hearing to determine value of the gems after the entry of the default judgment in favor of Hesier, against Woodruff.

Underlying Claim.

Objectors produced a large amount of evidence in support of their objections. Depositions of numerous witnesses were taken. The claimant offered no evidence on this point but relied on his judgment.

M. E. Heiser came to San Francisco from Australia the end of 1914 or the early part of 1915 on account of the Panama Pacific Exposition at San Francisco.

According to the testimony of M. E. Heiser the uncut gems ($164,000.00) of uncut sapphires, etc.) were brought to San Francisco in 1915 or latter part of 1914 and amounted to several tons. Heiser testified at the hearing to re-determine values in Heiser vs. Woodruff in the District Court of California: "I represented the Queensland Government at the Panama Exposition as their expert cutter for demonstration in 1915 in San Francisco cutting to demonstrate how the gems were cut and how they were mined." In his deposition in this proceeding he stated that he was not the official representative of any Government.

The depositions of three Australian officials were taken by objectors. As shown by these depositions Heiser was not

an official representative of the Australian Government nor
of any State Government of Australia. That Heiser
157 obtained permission to operate a small lapidist's
bench in the Australian Pavilion. That "one of the conditions of Mr. Heiser's tenancy at the Australian Pavilion was that no articles were to be sold by him therein. As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opals), the *Austrlian* Commissioners withdrew his permit to exhibit within the Australian Pavilion."

Heiser had his space in the Australian Pavilion about a week.

According to Heiser's testimony when he discontinued operations at the Exposition the cheaper material was stored in warehouse and other places and the better materials in the Wells Fargo Bank in San Francisco.

All this material according to Heiser's testimony (being the $164,000.00 worth of uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles. In Los Angeles it was stored in U. S. National Bank, Los Angeles, and none of the material was removed by anyone until it was removed under attachment in case of Woodruff vs. Golden State Gem Company.

Heiser went to Los Angeles in July, 1928, and shortly thereafter met Woodruff through one Calvin Smith who was connected with the Golden State Gem Company of California, a California Corporation. The Golden State Gem Company of Nevada, a Nevada, Corporation, was thereafter organized. Woodruff appears to have owned no stock in either of these corporations. Woodruff did loan $10,000.00 to Smith in addition to amount then owing to him by Smith.

Heiser in August, 1928, left Los Angeles for Europe and did not return to Los Angeles until September or October, 1930.

In 1929 Woodruff filed suit against Golden State Gem Company of California and Golden State Gem Company of Nevada and the material in the U. S. National Bank was attached. The material was contained in thirty six (36) sacks.

At the sale Woodruff bought thirty five (35) sacks for $1000.00. One sack was purchased by Louis Oreck for his son. Oreck testified that he selected what he *though* was the best sack of material but that it proved later to be of no value.

While Heiser was in Europe the Golden State Gem Company of California was adjudged bankrupt. A claim was filed in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother in law, which was disallowed and upon appeal the appeal dismissed.

158 I hand up herewith for the information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs filed with Referee prior to order disallowing Heiser claim;

2. Brief on behalf of objectors to the claim of M. E. Heiser.

3. Reply brief in behalf of the claim of M. E. Heiser.

4. Petition for review.

5. Copy of order disallowing M. E. Heiser claim.

6. Copy of proof of debt of M. E. Heiser and Supplement thereto.

7. Objections of debtor, Leonard Woodruff, to claim of M. E. Heiser.

8. Answer to objections of Leonard J. Woodruff, by M. E. Heiser.

9. Objections of Wille May Woodruff to claim of M. E. Heiser, and Amendment thereto.

10. Answer of M. E. Heiser to objections of Willie May Woodruff.

11. Objections of Ida Belle Woodruff to claim of M. E. Heiser and Amendment thereto.

12. Answer by M. E. Heiser to objections of Ida Belle Woodruff.

13. Objections of Howard Woodruff to claim of M. E. Heiser.

14. Answer of M. E. Heiser to objections of Howard Woodruff.

15. Objections of Margueritte Woodruff to claim of M. E. Heiser.

16. Answer of M. E. Heiser to objections of Margueritte Woodruff.

17. Objections of Leonard Woodruff, Jr., to claim of M. E. Heiser.

18. Answer of M. E. Heiser to objections of Leonard Woodruff, Jr.

19. Transcript of Hearing before Referee on objections to Heiser claim.

The following depositions taken in behalf of objectors:

20. Deposition of M. E. Heiser.

21. Deposition of D. K. Stern.

22. Deposition of E. A. Lobree.

159 23. Deposition of Jefferson J. Graves.

24. Deposition of C. N. Olson, H. A. Dewing, C. W. McClain, J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck, and Claire E. Cone.

The following three (3) depositions were taken in Australia:

25. Deposition of Leo Joseph Jones.

26. Deposition of Adolphus Arnold Staines.

27. Deposition of David Barnett Elward.

28. Exhibits.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944. John H. Pugh, Clerk, U. S. District Court.

[Memorandum Opinion.]

160 On July 5, 1939, Leonard J. Woodruff (hereinafter referred to as the bankrupt), was adjudged to be a bankrupt by this court upon his voluntary petition filed herein. This was but a few days after the United States District Court for the Southern District of California, Central Division, had refused after a hearing to modify a judgment which had been entered against the bankrupt on March 20, 1939. Prior thereto, the United States District Court for California had refused to set aside an entry of default judgment against the bankrupt. It is my conclusion that the action of the California Court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankruptcy in this court. The chief controversy in this proceeding has centered upon the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above.

In the bankruptcy proceedings three groups of claims have been filed: (1) Claim of Heiser, based upon his judgment, (2) Claim of Willie May Woodruff, wife of the bankrupt, and (3) The claims of Howard L. Woodruff, Marguerite B. Woodruff and Leonard Woodruff Jr., children of the bankrupt. The claim of Heiser was denied by the referee. The claim of Willie May Woodruff, the wife, was allowed by the referee in the total amount of $842,176.15, being $477,750.68 principal and $334,425.47 interest to the date of the order. The claim of Howard L. Woodruff was allowed for

the total sum of $75,177.12. The claim of Margueritte
161 B. Woodruff was allowed in the total sum of $83,-
097.33. The claim of Leonard Woodruff Jr. was allowed in the total sum of $53,097.33. The action of the referee in disallowing Heiser's claim and in allowing the claim of the wife and the claims of the children are now here on bill of review brought by Heiser.

The bankrupt, his wife and three children, objected to Heiser's claim. Heiser objected to the claim of the wife and the claim of each of the children except that Heiser admitted the claim of the wife should be allowed to the extent of $18,000.00, and that the claim of Howard L. Woodruff should be allowed in the sum of $2,048.75.

The three groups of claims will be discussed separately.

Claim of Heiser.

P. M. Jackson, an attorney of Ardmore, Oklahoma, was appointed and qualified as trustee in bankruptcy of the bankrupt's estate. Early in these proceedings the trustee joined by the bankrupt and the other two groups of creditors applied to this court for authority to begin proceedings in the United States District Court for the Southern District of California to vacate and set aside the judgment rendered therein. The trustee was authorized by this court to employ competent counsel in California to represent him, to take all necessary and proper steps to vacate the Heiser judgment. This the trustee did. The bankrupt joined in the action begun by the trustee. The result of their efforts is disclosed in the decision of the Circuit Court of Appeals of the Ninth Circuit, Jackson v. Heiser, 111 Fed. 2nd, 310. The history of this judgment is well disclosed in the opinion of the Circuit Court, supra. It is not necessary herein to recount the facts set forth therein.

The referee in his certificate of review states that two questions are presented: (1) Does the judgment prevent the bankruptcy court from considering the underlying claim of Heiser and allowing or disallowing it in
162 whole or in part? (2) Is the evidence of objectors sufficient to defeat the claim? The referee answered the first question in the negative, the second in the affirmative, and disallowed the claim. In my opinion the referee

erred in answering the first question as he did, and it was not necessary to consider the second.

The Heiser judgment was and is a final judgment entered by a United States District Court, a member of the same judicial body of which this court is a member. Before reaching this court for decision in bankruptcy, it had been attacked by both the bankrupt and the trustee in bankruptcy who was acting for the benefit of the other creditors. The judgment had the approval not only of the trial court but of the Circuit Court. It is res judicata as to all matters actually litigated or which might have been litigated therein. Moffett v. Robbins, 81 Fed. 2nd, 431; In Re. Cherokee Public Service Co., 94 Fed. 2nd, 536.

Section 63 a (1) of the Bankruptcy Act (11 U.S.C.A. Sec. 103 (a) (1), is applicable and provides debts of a bankrupt are provable and allowable which are founded upon

"• • • a fixed liability as evidenced by a judgment • • • absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date • • •."

For a discussion on the conclusiveness of judgments in a bankruptcy, see Gilbert's Collier on Bankruptcy, Fourth Edition, Sec. 1247, page 968; also, Collier on Bankruptcy, 14th Edition, Vol. 3, page 1817; Murphy v. McLoughlin, 247 Fed. 385; Beneficial Loan Co. v. Noble, 129 Fed. 2nd, 425.

In Pepper v. Litton, 308 U.S. 295, the Supreme Court held that the attack of a trustee in the state court upon the judgment involved therein was not res judicata. In the opinion the court said:

"And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties or is founded upon no real debt."

and in a foot-note the court said with respect to the above statement:

163 "This is, of course, in absence of a plea of res judicata."

In his application to this court by the trustee (in which application the objectors joined) to attack the Heiser judgment, it was stated that the judgment was based upon an erroneous, unjust and void judgment and was without merit. The order of this court to the trustee was full and complete authorizing him to do any and all things necessary and proper to avoid the judgment and thus defeat any claim based thereon. The purpose in authorizing the trustee to begin such proceedings was to defeat the judgment and thus avoid a claim based thereon in the bankruptcy proceedings. Had the trustee succeeded in his action, Heiser's claim, based upon the judgment, would have been defeated; and had Heiser's judgment been defeated, that would have been an adjudication against him as to all his rights against the bankrupt. I think it follows that an adverse decision on the action begun by the trustee and the bankrupt is res judicata in favor of Heiser. See Beneficial Loan Co. v. Noble, 129 Fed. 2nd, 425. For the effect to be given by this court to the judgment of another United States District Court, see Caterpillar Tractor Co. v. International Harvester Co., 120 Fed. 2nd, 82; Baldwin v. Iowa State Traveling Mens Association, 283 U. S. 522.

The action of the referee in disallowing Heiser's claim is error. The petition for review is allowed, and the referee's decision is reversed.

The Wife's Claim.

164 Willie May Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis

on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and securities with the exception of $18,000.00, was required to relieve the bankrupt of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more.

The Children's Claims.

165 The claims of the children are based upon alleged trusts created approximately twenty years before bankruptcy. The claimants present their claim upon the theory of a trust. The objector, Heiser, discusses their claims upon the theory of gifts inter vivos. The referee, after a hearing, determined that under the facts there was created a trust by the bankrupt in favor of each of the children in which trust the bankrupt was the trustee. These separate trusts were created by the purchase of certain stocks for one or the other of the children. The evidence discloses the stocks that were purchased and the amount thereof, and conclusively shows that these stocks were converted by the bankrupt many years ago.

The decision of the referee finding that there was a trust is sustained. However, the amount of the claim as to each of the children should be reduced in the amount of $9,925.83 plus $11,132.50, or a total of $21,058.33. The reason for this reduction is as follows: The evidence in support of the creation of a trust was the evidence of the bankrupt himself.

self, sustained by certain corroborating facts. The evidence of the bankrupt shows that the $9,925.83 item, plus the $11,132.50 mentioned above, was an investment in Imperial Irrigation bonds; that a short time after purchasing the Imperial Irrigation bonds he concluded that they were not a good investment and traded them for the Salt River Valley Water Users Association bonds; that the latter bonds proved to be more valuable; that the bankrupt subsequently converted and appropriated the Salt River Valley Water Users Association bonds. The amount of the claim as approved by the referee includes the value of both bonds plus the interest upon the value of the bonds. The bankrupt did not make two investments for his children. He merely changed the form of an investment. There were not two additions to the corpus of the trust estate—there was only one;
166 and the bankrupt's estate is chargeable only with the value of the Salt River Valley Water Users Association bonds. Included in the claim of each child, and allowed by the referee, is the item of $9,925.83, the value of the Imperial Irrigation bonds, plus $11,132.50 accumulated interest. This amount should be deducted from the claim of each child; and as so modified the decision of the referee as to the claim of each of the children is approved.

An order conforming to the views herein is this day entered.

This the 23rd day of June, 1944.

EUGENE RICE,
United States District Judge.

Filed June 23, 1944. John H. Pugh, Clerk, U. S. District Court, by R. Kizzire, Deputy Clerk.

[Judgment.]

167 Now on this 24th day of June, 1944, this case comes before this court for consideration on three separate certificates on review filed by the referee in bankruptcy, and based on petitions for review filed by M. E. Heiser, seeking review of an order of the referee disallowing the claim of Heiser in the amount of $278,631.71, an order allowing the claim of Howard L. Woodruff in the amount of $75,177.12, the claim of Margueritte B. Woodruff in the

amount of $83,097.33, and the claim of Leonard Woodruff Jr., in the amount of $53,097.33, and an order allowing the claim of Willie May Woodruff in the sum of $812,176.15.

On consideration of the briefs and oral arguments of the parties, the court being fully advised in the premises, is of the opinion and finds that the referee erred in denying the claim of M. E. Heiser, and that such claim should be allowed; that the referee erred in allowing in full claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff Jr., and that each of such claims should be reduced in the amount of $21,058.33, and allowed as so reduced; and that the referee erred in allowing in full the claim of Willie May Woodruff, and that such claim should be denied except as to the sum of $18,000.00, in which amount she admittedly has a valid claim, and that such claim should be allowed in the amount of $18,000.00.

168 It is, therefore, Ordered, Considered, Adjudged and Decreed that the petition for review of the Heiser claim is sustained; that the referee's order disallowing the said claim is set aside; and that the claim of M. E. Heiser in the amount of $278,631.71 is allowed.

It is further Ordered and Decreed that the petition for review of the referee's order allowing the claims of Howard L. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff Jr., is sustained; that the referee's order allowing such claims is amended as to the amount of the claims; and that the claim of Howard L. Woodruff is allowed in the sum of $54,118.79, the claim of Margueritte B. Woodruff is allowed in the sum of $62,039.00, and the claim of Leonard Woodruff Jr. is allowed in the sum of $32,039.00.

It is further Ordered and Decreed that the petition for review of the referee's order allowing in full the claim of Willie May Woodruff is sustained; that the referee's order is modified, and that the claim of Willie May Woodruff is allowed in the sum of $18,000.00, and is otherwise disallowed.

EUGENE RICE.
United States District Judge.

Filed June 24, 1944. John H. Pugh, Clerk, U. S. District Court by R. Kizzire, Deputy Clerk.

Notice of Appeal.

To the Clerk of the U. S. District Court, Muskogee, Oklahoma:

169 You are hereby notified that Wille May Woodruff, claimant herein, hereby appeals to the Circuit Court of Appeals for the Tenth Circuit from the order entered herein on June 24, 1944, reducing her claim to $18,000.00 and disallowing her claim for all in excess of $18,000.00, which order reversed the order of the Referee allowing her claim in full.

WILLE MAY WOODRUFF, Appellant

W. W. POTTER,
Attorney for Appellant.

Filed July 21, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

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170 [An appeal bond in the sum of $250.00, with Willie Mae Woodruff as principal and Howard L. Woodruff as surety, was filed July 21, 1944.]

Notice of Appeal

To the Clerk of Said Court and M. E. Heiser, the Judgment Creditor:

171 Notice is hereby given that Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Belle Woodruff, objectors to the claim of M. E. Heiser in the above entitled matter, hereby appeal to the Circuit Court of Appeals for the Tenth Circuit from the order of the Court entered herein on the 24th day of June, 1944, reversing the order of the

Referee in Bankruptcy disallowing the claim of said M. E. Heiser and ordering that said claim be allowed in full.

THOS. W. CHAMPION,
LOUIS A. FISCHL,
W. W. POTTER,
Attorneys for the Appellant.
By LOUIS A. FISCHL,
One of said attorneys.

Filed July 21, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

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172 [An appeal bond in the sum of $250.00, with Leonard J. Woodruff et al. as principals and J. H. Harrell as surety, was filed July 21, 1944.]

Statement of Points on Which Appellant Intends to Rely On Appeal.

178 The appellants, Willie Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., Ida Belle Woodruff and Leonard J. Woodruff, intend to rely upon the following points upon appeal herein to secure a reversal or modification of the order of the District Court reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that the claim of M. E. Heiser be allowed in full, to-wit:

1. The order appealed from permits a claimant in bankruptcy to realize upon a claim for $278,631.71, which claim is not founded upon a real debt, is without merit, is unjust and unconscionable. Such order violates the spirit and intent of the Bankruptcy act, looks to the form rather than the substance of said claim and in so doing, denies substantial right and justice, permits a fraud to be perpetrated upon a Bankruptcy Court; permits a claimant in bankruptcy to profit by fraud and perjury and permits a fictitious and *fradulent* claim to participate in an equitable distribution of assets by a Court of Equity.

2. The Court erred in not reviewing the evidence offered

in support of the objections to the claim of M. E. Heiser and in not making findings of fact thereon for the purpose of determining whether said claim is founded upon a real debt, is meritorious, right and just and is entitled to participate in an equitable distribution of the assets of the bankrupt estate.

3. The Court erred in not reviewing the evidence offered in support of the objections to the claim of M. E. Heiser and making findings of fact thereon for the purpose of determining whether said claim should be, (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of other creditors.

179 4. The order of June 24th, 1944, in contrary to the evidence in the case and contrary to the law of the case.

5. The Court erred in holding that the Referee in Bankruptcy did not have jurisdiction, power, authority and right to hear evidence on the claim of M. E. Heiser for the purpose of determining whether said claim should be (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of other creditors in said matter.

6. The Court erred in holding that the judgment underlying the claim of said M. E. Heiser, to-wit: the judgment rendered in favor of said M. E. Heiser in case No. 7256C in the United States District Court for the Southern District, Central Division, of the State of California, and which underlies his claim herein and the proceedings in said case after the rendition of said judgment, precluded the Referee in Bankurptcy from hearing evidence in support of the objections to the claim of said M. E. Heiser on the theory that said judgment and the subsequent proceedings in said case are res judicata of the right, power, authority and jurisdiction of a Court of Bankruptcy to hear evidence and ascertain the facts for the purpose of determining whether said judgment is founded upon a real debt, is meritorious, right and just and the claim founded thereon is entitled to be allowed in full and to participate in the distribution of the assets of the bankrupt estate upon a parity with all other claims therein and either in whole or in part.

7. The Court ered in holding that said judgment in case No. 7256C and the subsequent proceedings therein barred and estopped the Referee from hearing evidence in support of the claim founded upon said judgment.

8. The Court erred in holding that the proceedings by P. M. Jackson, Trustee in Bankruptcy herein, wherein he sought leave to *intervene* and be heard in said case No. 7256C in the United States District Court for the Southern District, Central Division, of the State of California in which said judgment was rendered, was a proceeding involving the merits of the controversy in said case and that the order denying said trustee permission to intervene and be heard therein was an adjudication upon the merits of the objections filed and urged to the claim of M. E. Heiser filed herein and therefore res judicate of the right of the Referee
180 in Bankruptcy to hear evidence in support of the objections to the claim of the said M. E. Heiser for the purpose of determining whether said claim should be, (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of the other creditors herein.

9. The Court erred in not affirming the order of the Referee in Bankruptcy denying the claim of the said, M. E. Heiser for the reason that the order of the Referee is a just and proper order and is supported by the evidence in the case and is within the jurisdiction, power and authority of the Referee in Bankruptcy and of the Bankruptcy Court

W. W. Potter,
Thos. W. Champion,
Louis A. Fischl,
Attorneys for Appellants.

Filed Aug. 4, 1944. John H. Pugh, Clerk, U. S. District Court.

Statement of Points on Which Appellant Intends to Rely on Appeal.

181 Comes now the appellant, Wille Mae Woodruff, and states that she intends to rely upon the following points upon appeal herein to secure a reversal or modifica-

tion of the Order of the District Court, dated June 24th, 1944, reversing the Order of the Referee in Bankruptcy, and disallowing the claim of this appellant almost in its entirety.

1. The order *appealled* from is contrary to the evidence in the case, and contrary to law in the case.

2. The court erred in not reviewing the evidence in support of the claim of this appellant, Wille Mae Woodruff, so as to ascertain that the uncontradicted evidence showed that this appellant received from her separate property the sum of $813,000.00; that of said amount there was delivered to her trustee, Leonard J. Woodruff, bankrupt, the sum of $569,000.00; that said sum was delivered under a trust created in 1920, and that it was never repudiated. The evidence further disclosed that at all times between 1920 and 1939 Leonard J. Woodruff, trustee for Wille Mae Woodruff, was the owner of a great deal of property located in several states in the United States, and that at all times Wille Mae Woodruff thought said property was of a value far in excess of the amount of money held in trust by said trustee, and that at no time did this appellant think her property or money was lost or in danger of being lost.

3. The court erred in not reviewing the evidence in support of the claim of this appellant and not making findings of fact thereon, finding that said trust was created and that all money delivered to the said trustee was under said trust agreement, and was to be invested solely for the benefit of this appellant.

182 4. The court erred in not reviewing the evidence in support of said claim, and in not making findings of fact, finding that bonds were purchased by the said trustee with the money of this appellant, and that this appellant was never returned her principal, interest, or dividends.

5. The court erred in making the following findings of fact in his memorandum, dated June 23rd, 1944, in connection with the claim of Wille Mae Woodruff, to-wit:

"Wille Mae Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments

for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and securities with the exception of $18,00.000, was required to relieve the *bankrut* of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

"My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more."

for the reason that said findings are contrary to the evidence.

6. The court erred in not affirming the Order of the referee in bankruptcy allowing the claim of this appellant, Wille Mae Woodruff.

7. The objecting claimant, M. E. Heiser was without power and authority to appeal from the order of the referee allowing the claim of this appellant.

8. The District Court was without jurisdiction to review the order allowing the claim of this appellant upon the petition for review of the claimant, M. E. Heiser.

W. W. Potter, Ardmore, Okla.
Attorney for Appellant.

Filed Aug. 7, 1944. John H. Pugh, Clerk, U. S. District Court.

Designation of Record on Appeal.

183 Comes now the appellant, Wille Mae Woodruff, and designates the following record on appeal herein:

1. Petition in Bankruptcy (without schedules).

2. Order of adjudication in Bankruptcy and Reference.

3. Order of Reference approving and allowing claim of Wille Mae Woodruff.

4. Claim of M. E. Heiser.

5. Supplement to claim of M. E. Heiser.

6. Order of Referee denying claim of M. E. Heiser.

7. Objections to claim of Wille Mae Woodruff made by the objector, M. E. Heiser.

8. Transcript of testimony on the proof of claim of Wille Mae Woodruff, and objections to claim of Wille Mae Woodruff.

9. Exhibits introduced adhering on proof of claim, and objections to claim numbered one to *eihty* (1-80) inclusive.

10. Order of June 24, 1944, by the Hon. Eugene Rice, District Judge, allowing in part, and disallowing in part the claim of Wille Mae Woodruff.

11. Memorandum of the Hon. Eugene Rice dated the 23rd day of June, 1944.

12. Assignment of Error.

13. Notice of Appeal, Wille Mae Woodruff, appellant, from the Order of the Hon. Eugene Rice, District Judge, dated June 24th, 1944.

14. Bond on Appeal.

15. This designation of Record on Appeal.

16. Petition for Review.

17. Certificate for Review.

18. Findings of fact and conclusions of law of Eugene Rice, District Judge, made in connection with his order of June 24th, 1944, disallowing in part and allowing in part the claim of Wille Mae Woodruff.

184 19. It is the intention to designate the entire record in this case with the reference to the claim of Wille Mae Woodruff, and the objections hereto filed by the claimant, M. E. Heiser, and the hearings thereon, and all exhibits and all evidence, avoiding duplications and omitting only such parts of the record and of the evidence as are duplcations.

Dated this the 4th day of August, 1944.

W. W. POTTER, Ardmore, Okla.
Attorney for Appellant.

Filed Aug. 7, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Application for Leave to Prosecute Appeal.

185 Come now, Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr. and Ida Belle Woodruff, and respectfully show to the Court that the Referee in Bankruptcy on August 30th, 1940, entered an order in this case staying the administration in bankruptcy of the debtor herein and granting creditors permission to contest the claim of other creditors. Said order is of record in this Court and reference to the same is hereby made for a more particular description thereof. These appellants are creditors of said debtor. One M. E. Heiser also claiming to be a creditor, filed a claim before the Referee in Bankruptcy to which these creditors objected and upon hearing said objections, the Referee in Bankruptcy denied the claim of the said M. E. Heiser from which order

denying his claim said Heiser filed his petition for review by this Court and upon said petition for review, this Court, on June 24th, 1944, entered an order reversing the order of the Referee in Bankruptcy denying the claim of said Heiser and ordering that said claim be allowed in full. Thereafter and within due time, these appellants, along with the debtor herein, Leonard J. Woodruff, filed their notice of appeal from said order to the Circuit Court of Appeals, together with bond on appeal, designation of record on appeal and statement of points to be relied upon on appeal.

Appellants further show to the Court that they are now filing an application for an order of the Court directing the transmission to the Circuit Court of Appeals of the original exhibits and depositions introduced in the hearing before the Referee in Bankruptcy.

Appellants further show to the Court that is the general rule in bankruptcy that one creditor cannot appeal from an order allowing the claim of another creditor. Appellant does not know whether said rule applies in this case because this matter is now pending upon the debtor's petition for an arrangement of his unsecured debts and under the order of August 30th, 1940 administration proceedings in bankruptcy have been stayed and creditors therein were given
186 permission to contest the claims of other creditors but appellants say that they are sincere in their appeal to the Circuit Court of Appeals from the order of this Court allowing the claim of M. E. Heiser and they desire that said Court pass upon said matters and in order that there may be no question about the right to prosecute said appeal from the order of this Court of June 24th, 1944 aforesaid, they ask the Court that an order be entered herein permitting them as creditors of said debtor to appeal to the Circuit Court of Appeals from the order of this Court of June 24th, 1944 allowing the claim of the said Heiser.

In connection with this application, appellants show that the same could not be presented before the notice of appeal was given herein for the reason that said Honorable Eugene Rice, Judge of this Court, has been outside of the State of Oklahoma since on or about July 1st, 1944 and only returned to this district on or about August 7th, 1944.

Wherefore premises considered, appellants pray the Court for an order permitting them to appeal to the Circuit Court of Appeals from the order of June 24th, 1944 reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and allowing said claim in full.

W. W. POTTER,
THOS. W. CHAMPION,
LOUIS A. FISCHL,
Attorneys for Appellants.
By LOUIS A. FISCHL,
One of said attorneys.

Filed Aug. 9, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Order Permitting Creditors to Prosecute Appeal.

189 Now on this the 21st day of August, 1944, at Muskogee in said district, is presented to the court the application of Leonard Woodruff, Jr., Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, and Ida Belle Woodruff for leave to prosecute an appeal herein to the Circuit Court of Appeals from the order of the court entered in this cause on June 24th, 1944, reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that said claim be allowed in full. The applicants appear by their attorney of record, Louis A. Fischl. The court finds that notice of this hearing has been given to all interested parties and that no other appearance is made at this time.

The court finds that the applicants, Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., and Ida Belle Woodruff, are creditors of the debtor, Leonard J. Woodruff, and have claims that have been allowed in said bankruptcy proceedings; that said proceeding is pending upon a petition for an arrangement and an order of the Referee in Bankruptcy entered August 30th, 1940, staying administration in bankruptcy and granting creditors permission to contest the claims of other creditors.

The court further finds that the applicants herein have

filed notice of appeal to the Circuit Court of Appeals from said order of June 24th, 1944, together with bond on appeal, designation of record on appeal and statement of
190 points to be relied upon on appeal. Applicants made no request upon the trustee in bankruptcy to appeal from the order of this court reversing the order of the Referee in Bankruptcy and directing that the claim of M. E. Heiser be allowed in full. The application is made to this court by reason of the uncertainty as to whether or not in this particular proceeding and under the order of the Referee in Bankruptcy entered on August 30th, 1940, the applicants have the right to appeal without an order of the court.

The reason this application was not presented to the undersigned judge before the expiration of time for the filing of notice of appeal is that the undersigned judge was out of the state of Oklahoma from the 4th day of July, 1944, until the 7th day of August, 1944. Whether or not the applicants are proper parties to prosecute an appeal presents a legal question that may, and no doubt will, be raised in the Circuit Court of Appeals. If an order of this court is necessary for them to prosecute the appeal, the court is quite willing to enter the order, and due to the uncertainty of the law the court does enter the order.

It is therefore ordered that the application for leave to prosecute appeal to the Circuit Court of Appeals by the creditors Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., and Ida Belle Woodruff, from the order of this court of June 24th, 1944, reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that the same be allowed in full be, and the same is hereby, granted and said applicants are given permission to prosecute an appeal herein from said order to the Circuit Court of Appeals.

EUGENE RICE, Judge.

Filed Aug. 21, 1944. John H. Pugh, Clerk, U. S. District Court.

Order Extending Time to Lodge Record on Appeal.

191 Now on this 23rd day of August, 1944, it appearing that the Clerk of this Court requires additional time within which to prepare and transmit transcript of record on appeal of the appellants Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Bel[illegible] Woodruff; and good cause appearing therefor.

It is therefore ordered that the time for lodging the record on appeal of said appellants Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Belle Woodruff; be and is hereby extended to and including the 30th day of September, 1944.

EUGENE RICE,
U. S. District Judge.

Filed Aug. 23, 1944. John H. Pugh, Clerk, U. S. District Court.

Geo. F. Clark,
Referee

Department of Justice

Eastern District of Oklahoma
Office of Referee in Bankruptcy
McAlester, Oklahoma, July 21, 1944.

Mr. John H. Pugh, Clerk, U. S. District Court, Muskogee, Okla.

Dear Sir: Re: Leonard J. Woodruff, in Bankruptcy No. 7623.

193 Enclosed find transcript of hearings on M. E. Heiser Claim, Nov. 15, 16, 18, 22 and 26, 1940 which has not been transcribed.

Yours truly,

GEO. F. CLARK.

[Transcript of Proceedings, November 15, 16, 18, 22 and 26, 1940.]

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195 Now on this the 15th day of November, 1940, the above styled matter came on for hearing herein, the bankrupt, Leonard J. Woodruff being present in person and by his attorneys, Champion & Fischl, the claimant, M. E. Heiser, being present by his attorney, Rupert Beach Turnbull of Los Angeles, California, and the other claimants herein being present in person and by their attorneys, after which the following testimony was offered in support of the M. E. Heiser claim.

By Mr. Turnbull, of Counsel for M. E. Heiser:

If the Court please, in support of the claim filed by M. E. Heiser, based on a judgment, the claimant now offers in evidence first the claim as filed by M. E. Heiser, together with the exhibits thereto—the certified copies attached thereto as Claimant's Exhibit "A".

By Mr. Casey: If the Court please, I don't know what the certified copies are.

By Mr. Turnbull, of Counsel for M. E. Heiser:

The instruments attached, or the instrument attached is certified under the District Court rules, it is in proper
196 form and is proper evidence; we offer the claim itself as our Exhibit "A".

By the Court: All right.

By Mr. Turnbull, of Counsel for M. E. Heiser:

We also offer in evidence the supplement to the claim of M. E. Heiser.

By Mr. Casey: May I see it?

By Mr. Turnbull: It is in the file.

By Mr. Casey: I am entitled to see it I think. You are offering the supplement?

By Mr. Turnbull: To the proof of claim of M. E. Heiser, yes, sir, and I will offer testimony in support of the matters therein stated. The Statutes require certain forms and I want to show we have complied with the rules is regard to that form.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial and is secondary evidence and is self serving and an attempt to avoid a deposition, by voluntary statements of the claimant; the so-called alleged claim is only a statement made by the claimant, when he is not present and cannot be cross examined and it is self serving.

By Mr. Turnbull: It is to show the claimant in fact complied with the orders and rulings of the Court in the filing of the claim in the matter of the general orders of the Court
under the code, it does show conformity to the law
197 and I do expect to offer the documentary proof but
we are showing we have filed it in the form required by law, that is what we are showing now.

By Mr. Casey: That is true, but they should have Mr. Heiser present.

By Mr. Turnbull: The objections have been filed and the burden is upon the claimant to establish his claim by proof and that is what we are attempting to do.

By Mr. Casey: This is the so-called supplemental claim or supplement to the claim and it is only a self serving statement.

By the Court: That would not be considered as testimony, that goes to the consideration for the indebtedness I presume.

By Mr. Turnbull: May it be admitted as Claimant Heiser's Exhibit "B".

By the Court: Yes, as far as the statement and all, it will not be considered as far as the statements are concerned

By Mr. Turnbull: We offer in evidence an exemplified copy of the complaint for damages in the case of M. E. Heiser vs. Leonard Woodruff, and others, No. 7256 C in the District Court of the United States for the Southern District

of California, Central Division, and ask that it be marked as Claimant Heiser's Exhibit "C".

By Mr. Casey: I do not see the relevancy of the complaint on which the judgment is based.

198 By Mr. Turnbull: We expect to show this judgment was a final judgment, that it was attacked by the trustees in favor of the creditors and certain issues were raised and to have those issues before the Court this case would be res judicata and your Honor could tell if it was within or without the issues, and it is proper that the character of the claim—

By Mr. Casey: We are not here on the question of any man's discharge, that is all immaterial here, the complaint and the proceedings in that case, the proof of the debt or of the claim must be in the statement, and that is sufficient as far as the claim itself is concerned, and this has nothing to do with whether or not this claim is allowed, and it has nothing to do with this proceeding this morning.

By Mr. Turnbull: We have a right to show this judgment is a final judgment and the right to show that it is res judicata and cannot be attacked by anyone at this time, and further that the trustee under the order of the Court, upon the application of the trustee, the Court made an order permitting the trustee or ordering the trustee to attack this

199 claim and the trustee went to the State of California for that purpose. It will be contended here that the matter is not res judicata and your Honor will be called upon to determine that issue and you will have to know what the judgment roll was and what was decided. It will be contended by the claimant Haiser that the trustee instituted an independent action attacking this judgment, that action was tried and it went to the Court of Appeals and it was held there that it was an attack upon the final judgment, and if that is true your Honor will have to pass upon what matters are res judicata. The Courts have repeatedly said that you are entitled to show the record of the case to determine what is res judicata, what issues were raised or determined, or could have been determined, this was not a default judgment, evidence was offered in support

of the judgment and the defendant came in and it was stipulated that he could offer proof, documentary proof as to that judgment and you will have to determine whether that or this is res judicata and whether or not that became a final judgment, and whether the full faith and credit shall be given by this Court to a Court of equal dignity and unless you have that proof when your Honor goes into it, when your Honor has to decide that issue, how could you decide it.

200 By Mr. Casey: I do not disagree with the statement at all, but the way he is doing it, he is offering proof of something not in the claim. If this is a non-dischargeable obligation the place to put that is in the claim, but to show this is res judicata he must show the judgment roll, not the complaint and such papers of the judgment roll that suits his purpose but the judgment roll itself, how can you determine, you offer the complaint and do not offer the answer, how can your Honor decide the matter?

By Mr. Turnbull: If the Court please, I am offering all of these instruments and there was a trial on the merits for ten days, I make that statement as a voluntary statement in this case.

By Mr. Casey: If the Court please, he makes that statement but it is not true, a trial upon the merits of the case has never been had, the trial was upon the matter of whether the default should be set aside, the merits of the case was never gone into. The judgment roll will show what was done. Counsel says it was tried on its merits, I know that it was not. The action upon the motion to set aside the

201 judgment will not show what took place in the Court and the judgment roll is the only thing that will show, but he has no right to show the complaint, a certified copy of the complaint instead of the judgment roll, I don't know personally, I have not gone through it, but I do know personally there was never a trial on the merits in that case.

By the Court: Let it go in.

By Mr. Turnbull: I offer an exemplified copy of the summons in the case of M. E. Heiser, vs. Leonard Woodruff, and others, No. 7256-C Law together with the return of the United States Marshal, together with the certificate and

affidavit of service of the United States Marshal and the certificate of the Clerk of that Court as Claimant's Exhibit "C", and it is offered for the purpose of showing jurisdiction.

By Mr. Casey: We make the same objection, it is an attempt to offer in this case certain instruments without offering the judgment roll and it is incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Turnbull: I show counsel before offering it the affidavit of Leonard J. Meyberg, which is an application for the entry of a default judgment and also the praecipe
202 for the entry of default judgment or for the entry of default against the defendant, Leonard Woodruff, duly exemplified by the Clerk and the Judge of the District Court of the United States for the Southern District of California, the Central Division, as Heiser's Exhibit "E".

By Mr. Casey: To which we make the same objection.

By the Court: Overruled.

By Mr. Turnbull: I offer in evidence a certified copy of a judgment in the case of Heiser vs. Woodruff, in the same case, and in the same Court as our Exhibit "F".

By Mr. Casey: To which we make the same objection and further it does not appear that this is a final judgment and it never became final.

By Mr. Turnbull: I will show it became final, if the Court please.

By Mr. Casey: That should be done by the judgment roll.

By Mr. Turnbull: I have to produce the record on appeal from another Court and this is the judgment from which the appeal was taken.

By the Court: Overruled.

By Mr. Turnbull: I show to counsel an exemplified copy of a notice of motion to set aside default and default judg-

ment by his attorneys Ames Peterson and Edward Fitzpatrick, duly certified.

By Mr. Casey: We make the same objection, if the Court please.

203 By the Court: Overruled.

By Mr. Turnbull: If there is not any changes, or anything special to be called to the attention of the Court by counsel, the original objection may be made in each instance where we offer these exhibits, if the Court please, as far as we are concerned.

By the Court: That will be all right.

By Mr. Turnbull: The notice of motion to set aside default and default judgment, together with acknowledgment of the receipt of a copy of the same I believe is our Exhibit "E". I offer in evidence an affidavit of attorney Robert L. Beveridge in answer to references to him in plaintiff's affidavit of opposition to defendant, Leonard J. Woodruff's motion to set aside default and default judgment as Claimant's Exhibit "H".

By Mr. Casey: To which we make the same objection and furthermore this is an attempt to get directly into evidence without complying with the rules of deposition and without being subject to cross examination and is incompetent, irrelevant and immaterial and it is not binding upon the parties in this case.

By the Court: I do not know whether or not it would be binding on the parties in this case.

By Mr. Turnbull: It is to show the pleadings and the issues raised.

204 By the Court: And what is this?

By Mr. Turnbull: It is an affidavit made by Mr. Beveridge on behalf of his client. The Courts say it is not only matters that were raised by the parties or by the issues but what should have been raised. They raise the question by affidavit and in an equitable Court, which try equity matters, those questions were raised by affidavit.

By Mr. Casey: The trustees and the creditors were not a party to that case.

By the Court: What would be construed as evidence are not part of the pleadings.

By Mr. Turnbull: A great many courts hear equitable cases upon affidavits. This is offered, not in support of the judgment shown in the affidavit but to show what issues were raised in that case or could have been raised.

By Mr. Casey: This is not filed in the Jackson case.

By Mr. Turnbull: It was filed in the case of M. E. Heiser vs. Leonard Woodruff, No. 7256-C.

By Mr. Casey: But that is not the Jackson case.

By Mr. Turnbull: No, but it is elementary and it has been held in this circuit that the issues raised or matters determined by the final judgment or the matters that were raised or could have been raised by the parties, that is the determining factor.

By Mr. Casey: If we produce an affidavit by Mr. Woodruff denying or contradicting anything in the affidavit made by opposing parties could we introduce it here, and
205 that is the reason we are insisting that the judgment roll in its entirety should be introduced and that is what is binding upon the parties.

By the Court: The objection is sustained.

By Mr. Potter, of Counsel for Willie Mae Woodruff:

May it be stipulated and agreed that the objections now being made by Mr. Casey may be considered also upon the part of the other objectors?

By Mr. Turnbull, of Counsel for Mr. Heiser:

That is all right, if the Court please, without re-stating their objection, that may be so considered as far as we are concerned.

By the Court: Very well.

By Mr. Turnbull: We except to the ruling of the Court and offer to prove at this time by an exemplified copy of

the affidavit of Robert L. Beveridge in answer to references to him in plaintiff's affidavit of opposition to defendant Leonard Woodruff's motion to set aside default and default judgment filed in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendant, No. 7256-C, that a certain issue was raised by the defendant Woodruff, through his then counsel, Robert L. Beveridge, and for the purpose of making this offer of proof, I desire to have this exhibit marked as Heiser's Exhibit "H".

206 By the Court: The offer and tender of proof is rejected.

By Mr. Casey: You mean by that our objection is sustained?

By the Court: Yes, sir.

By Mr. Turnbull: Exception.

By Mr. Casey: And the tender of proof is denied?

By the Court: Yes.

By Mr. Turnbull: I show counsel and offer in evidence an exemplified copy of the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default.

By Mr. Casey: You also offer the affidavit attached thereto?

By Mr. Turnbull: I offer the instrument and the exhibits attached thereto, which is properly certified.

By Mr. Casey: I am replying upon the statements of what he is offering.

By Mr. Turnbull: That is what the instrument is entitled a reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default; that is what I am offering as Heiser's Exhibit "I", and I said I offered Exhibit attached thereto.

By Mr. Casey: We make the same objection as before and call your Honor's attention in addition to the reply so called that purports to be an affidavit of M. E. Heiser

207 attached thereto and the brief which is no part of the judgment roll or any evidence in this case. This docu-

ment contains some forty or fifty pages and is a list of authorities.

By the Court: Let that portion of the reply be admitted which is a part of the judgment roll.

By Mr. Turnbull: The judgment roll in this case would have ended in the judgment if they had not come in and filed a motion to vacate and the Court heard evidence and then they came back and moved to set aside the judgment on this evidence, and we are entitled to show what took place at that time.

By Mr. Casey: I contradict that, no evidence was offered on the judgment in this case, your Honor. I think you are correct that part of this is the judgment roll and is admissible, I think that is correct. I believe there is a mandate in that case.

By Mr. Turnbull: I have it, yes, sir.

By Mr. Casey: And if the Court please, this is a legal argument and a long list of cases and it is and does constitute the briefs in that case and I am amazed that the Clerk would put that in the judgment roll.

By Mr. Turnbull: I show here to counsel the judgment and it recites, "and the default of said defendant, Leonard Woodruff having been entered" and then it goes on
208 to say that upon the application of plaintiff the matter having been brought before the Court for hearing, the Hon. Geo. Cosgrave presiding, the evidence having been introduced in open session of this Court, and so forth.

By Mr. Casey: And what matter is that?

By Mr. Turnbull: May I address the Court without interruption?

By Mr. Casey: I object to the gentleman reading anything into the evidence.

By Mr. Turnbull: This is in evidence, this is Heiser's Exhibit "F", the matter came on for hearing and the Court heard the evidence and the Court being fully advised in the premises.

By Mr. Casey: If the Court please, I stand on my state-

ment, my statement is not wrong and it is not ignorance when I say that no evidence was offered in that case, there was no trial on the merits in this case at all.

By Mr. Turnbull: We have before us at this time and I offer in evidence an exemplified copy of the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside the default as our Exhibit "I".

By Mr. Casey: We object to it as a self serving statement and it is incompetent, irrelevant and immaterial and could not possibly have anything to do with the judgment roll.

209 By the Court: The objection is sustained.

By Mr. Turnbull: Exception and at this time may the instrument be marked for identification as Heiser's Exhibit "I".

By the Court: Yes, that may be done.

By Mr. Turnbull: At this time the claimant Heiser offers to prove by the exemplified copy, duly exemplified by the certificate of the Clerk of the Court of the United States, Southern District of California, Central Division, the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default.

By the Court: I don't understand that instrument to be a reply, it is really an argument. I can't see wherein it is a reply and the objection thereto is sustained.

By Mr. Turnbull: Exception, we now offer in evidence a certified copy and an order of the Court, the District Court for the United States, Southern District of California, Central Division upon the motion of Leonard Woodruff to vacate and set aside default judgment rendered against said defendant.

By Mr. Casey: We object to it upon the same ground as heretofore stated and call your Honor's attention to it again. This judgment roll does not show this is a final judgment and he is merely introducing in this record a part of the judgment roll.

210 By Mr. Turnbull: This is offered as our Exhibit "J", if the Court please.

By the Court: All right, let it be admitted for what it is worth.

By Mr. Turnbull: I present to counsel and offer in evidence as Heiser's Exhibit "M" an exemplified copy of the amended order of the minutes of the Clerk for the District Court of the United States for the Central Division of the Southern District of California in the matter of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendant, No. 7256-C-Law, relating to the proceedings had on the 12th day of June, the 19th day of June, the 22nd day of June and the 23rd day of June, 1939, respectively, in reference to the judgment already in evidence in that case.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial and we understand it to be a lot of minutes of the Court room Clerk and not orders made by the Court.

By Mr. Turnbull: This becomes material for this reason, the California Court first had jurisdiction because the defendant Woodruff was served regularly with summons in that jurisdiction and it had jurisdiction again because
211 Woodruff appeared in the case and entered into certain stipulations in regard thereto, especially in regard to the value of the damages in that case. They raised certain jurisdictional questions in that case and this is one of them, and I want to show he appeared and participated and introduced certain evidence as to the value of the property and participated in that matter which ultimately resulted in a final judgment and to show that I have to show what evidence he introduced and the effect of it, and I want to show the various exhibits offered, the various exhibits and documents and so forth and to show he participated and that is the reason I am trying to show it now, because when we get through with the proof we will or will not have proven the Court had jurisdiction to enter judgment and will or will not have proven the Court entered judgment that became final and to do that I am trying to show the proceedings had and the formal appearance of Mr. Woodruff and that he did offer this proof which resulted in this

judgment that he is now complaining of and to show it by the record is the only way I know.

By Mr. Casey: It must appear in the judgment roll. The Court may have or may not have jurisdiction over me and I may appear by special appearance and after
212 that is overruled I may offer proof and testimony and if the Court does have jurisdiction the judgment roll will so show and in our opinion the Clerk should prepare a proper judgment roll, there is a proper way to show it. If we were trying this in the Southern District of California the Judge would not let these exhibits be introduced, you would take the whole judgment roll and offer it. He may have it all but I do know that these statements and affidavits are not part of the judgment roll.

By the Court: Overrule the objection.

By Mr. Turnbull: I present to counsel and will offer in evidence a certified copy of the proceedings had on the 27th day of June, 1939, in the same case showing the presence of Leonard J. Woodruff in the trial of that matter and also under the same certificate and the same cover the proceedings had on the 28th day of June, 1939.

By Mr. Casey: We object to the minutes of the Clerk, these are not the orders of the Court or the record of the Court. It seems here the Clerk enters up the history of what he thought took place and it is no part of the proceedings, a mere blotter purported memorandum of what the Clerk thinks took place.

213 By Mr. Turnbull: To show that, if the Court please, we are offering the exhibits.

By Mr. Casey: That is not the record of the Court, that is what the Court thinks.

By Mr. Turnbull: The Clerk does make up the record, makes a record of the exhibits offered and numbers them and who offered them, and that is all this is offered for, trying to prove he was there participating at that time.

By Mr. Casey: This proceeding of the trial of the controversy between Mr. Heiser and Mr. Woodruff on its merits, is that what you claim this is?

By Mr. Turnbull: Part of it.

By Mr. Casey: You mean part of the trial on its merits?

By Mr. Turnbull: The Clerk says the Court determines the matter that was submitted or might have been submitted.

By Mr. Casey: This instrument contradicts the statements of counsel that it was a hearing on its merits.

By Mr. Turnbull: If the Court please, we will argue it at the end of the case.

By the Court: For what purpose is this offered?

By Mr. Turnbull: To show upon the motion to vacate the judgment, to vacate the default upon the application of Mr. Woodruff, and it allowed him eight days to show his evidence, to make his proof and that he appeared
214 in that action and the Court had jurisdiction only by the service of summons upon him, not only by the service of summons upon him but he appeared in the trial. Mr. Woodruff was present and the Court said, "We will hear evidence on a portion of it," and Mr. Woodruff participated therein and your Honor will be required to say whether or not this judgment was a good judgment and one of the grounds is that the defendant appeared and participated in the trial upon at least a part of the issues and the Clerk's minute shows he came in and participated in the trial of that case, and there was no question raised about the jurisdiction.

By Mr. Casey: If the Court please, it all resolves itself down into being an ex parte statement made by a party not by the Court.

By Mr. Turnbull: They are a part of the Court records.

By Mr. Casey: They do not show whether they were made by Mr. Heiser or Mr. Turnbull or anyone else.

By Mr. Turnbull: If the Court please, here is a certificate as to what these minutes are.

By Mr. Casey: As to what someone said it is.

By Mr. Turnbull: It is a certificate by Mr. R. S. Zim-

merman Clerk of the Court, and it says it is a true copy of the minutes entered therein on June 27th and June 28th, 1939. The District Judge does not certify to the minutes but this is the minute orders in that case and so certified by the Clerk.

215 By Mr. Casey: This does not prove they are correct.

By Mr. Turnbull: Counsel can't challenge the fact they are not correct or are not what the Court certifies and says they are. There is only one thing or one question before your Honor, are you going to take the certificate as to what they are or Mr. Casey's statement, the Clerk says they are minute orders.

By Mr. Casey: If you will show me in there that they were made by and at the direction of the Court I will withdraw my objection. This does not show they were minute orders made at the direction of the Court. This has nothing to do with the minute orders and the minutes of the Clerk are not part of the judgment roll.

By Mr. Turnbull: This is the way the Clerk made up the minutes and they show what they are.

By Mr. Casey: The Court did not make those orders.

By Mr. Turnbull: It proves there that Mr. Woodruff appeared and participated generally in that action.

By Mr. Casey: There is nothing here to show that he did not appear specially for the purpose of that motion.

By Mr. Turnbull: He did not appear specially. That was in a Court of equal dignity and equal jurisdiction as this Court and it is the minute order of those two days.

216 By the Court: Overrule the objection.

By Mr. Turnbull: I offer in evidence as Heiser's Exhibit "M" an exemplified copy by the Clerk of the District Court and the Judge of said Court the minute orders of the Court of the 29th of June, 1939.

By Mr. Casey: Same objection.

By Mr. Turnbull: This document shows the action of the Court after hearing the evidence in the case.

By the Court: All right, let it be admitted.

By Mr. Turnbull: I offer in evidence at this time the application, I offer it by reference, in this proceeding the application of P. M. Jackson, Trustee, for authority to employ counsel and institute legal action to set aside the judgment of M. E. Heiser against Leonard Woodruff entered in cause No. 7256-C in the District Court of the United States for the Southern District of California, the Central Division, which was filed in this Court August 23rd, 1939, George F. Clark, Referee, and which purports to be a petition by Mr. Jackson verified by P. M. Jackson before the Hon. George F. Clark as Acting Referee, and we offer in evidence the application by reference which I have shown counsel in its entirety and that is part of your Honor's files.

217 By the Court: All right.

By Mr. Turnbull: The application of creditors for an order directing the trustee to attack this judgment, it is entitled and styled in this case in the District Court of the Eastern District of Oklahoma, No. 7623, signed by W. W. Potter, attorney for the creditors, and it reads as follows:

(Here Mr. Turnbull, of counsel for Mr. Heiser, read to the Court said petition.)

By Mr. Turnbull: And we offer that in evidence by reference and it was filed in this Court before your Honor as Referee August 23rd, 1939. We offer in evidence by reference the order in this case made by this Court authorizing the Trustee to institute legal action to set aside the judgment of M. E. Heiser vs. Leonard Woodruff in the case in California heretofore referred to, and it bears the signature of your Honor and which instrument recites the petition which I have offered and referred to and authorizes the trustee to take proceedings in regard to the Heiser judgment. I would like to ascertain if it is stipulated that that instrument bears the signature of the Court.

By Mr. Casey: Certainly.

218 By Mr. Turnbull: I now present to counsel as Heiser's Exhibit "N" an exemplified copy of the notice of motion to vacate judgment to set aside default, to vacate

orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by J. M. Jackson, Trustee in Bankruptcy, for Leonard J. Woodruff, and to allow the trustee in bankruptcy to intervene.

By Mr. Casey: To which we make the same objection. We make the same objection as to the other proceeding on the motion for the matters in regard to the trustee. The matters brought by the trustee, if the Court please, is an independent action and it has a judgment rol' of its own and it should be proven by that judgment roll.

By the Court: Let it go in.

By Mr. Turnbull: I show counsel an exemplified copy of the affidavit of merits in support of motion to vacate judgment by default and so forth, as made by P. M. Jackson, in the matter of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendants, No. 7256-C, for the purpose of showing the action taken by Mr. Jackson and to show the issues raised.

By Mr. Casey: It is incompetent, irrelevant and immaterial and it is an affidavit and contains no part of the judgment roll and it would not be binding upon the
219 parties to this proceeding and it is an attempt to get away from introducing the judgment roll in this case.

By Mr. Turnbull: This is the affidavit of merits in support of motion to vacate judgment by default by Jackson. Mr. Jackson attempted to intervene in the case of Heiser vs. Woodruff and the Court made an order denying him that right and then he filed an attack upon that judgment in the nature of an equitable attack, such as he might have brought for fraud or collusion and that that petition was based upon these affidavits and that was done and Mr. Jackson, an attorney here employed Mr. Cobb to represent him in California, and that matter was presented to the Court, they were in Court under the authority that permitted them to make an independent attack upon the judgment and the Court said, "You are right, that is a final judgment but you can make an independent attack on it for fraud in procurement," and they did entertain it and this is the basis upon which

he attacked it, this is the proceedings upon which he attacked it, and the Circuit Court adjudicated that and said we will divide that against you, these are the pleadings in that case. I rather not go back into this case at all, and I am putting these proceedings in in their chronological order.

By Mr. Casey: You should have the judgment roll in evidence.

By the Court: The objection is overruled, let the exhibit go in.

By Mr. Turnbull: That has been marked Heiser's Exhibit "O" if the Court please. I show counsel now an instrument which has been marked for identification as Heiser's Exhibit "P" and is an exemplified copy of the affidavit of M. E. Heiser resisting the application of Mr. Jackson, trustee in bankruptcy.

By Mr. Casey: We make the same objection, if the Court please.

By the Court: Overruled.

By Mr. Turnbull: We next offer in evidence as Heiser's Exhibit "Q" the affidavit of Leonard J. Meyberg in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., in the District Court of the United States, Southern District of California, Central Division.

By Mr. Casey: The same objection, if the Court please.

By the Court: Let it go in.

By Mr. Turnbull: We next offer in evidence as Heiser's Exhibit "R" an exemplified copy of the minute order of September 26th, 1939, in the same case.

By Mr. Casey: We object to it, if the Court please, same objection.

By the Court: Overruled.

By Mr. Turnbull: If the Court please, we next offer in evidence as Heiser's Exhibit "S", the notice of appeal in the case of M. E. Heiser vs. Leonard Woodruff and others.

case No. 7256-C in the District Court of the United States for the Southern District of California, Central Division.

By Mr. Casey: If the Court please, we make the same objection and there has been no proper foundation laid for its introduction. There are no orders authorizing this man Jackson to take an appeal.

By Mr. Turnbull: That has heretofore been offered in evidence, the authority to prosecute the matter.

By Mr. Casey: Made subsequent to the date of the appeal.

By Mr. Turnbull: Your Honor made an order authorizing the trustee to attack that judgment and I think that is not severable.

By Mr. Casey: That does not authorize him to take an appeal.

By Mr. Turnbull: Counsel has not read the entire order.

By the Court: Overrule the objection.

By Mr. Turnbull: I offer an exemplified copy in the matter of M. E. Heiser vs. Leonard Woodruff and others, in that same case in the District Court for the Southern District of California, an exhibit signed by Francis D.
222 Cobb and by Edward Fitzpatrick entitled appellants' statement of the point on which they intend to rely on the appeal.

By Mr. Casey: If the Court please, I insist that it be put out of this proceeding.

By the Court: Overruled.

By Mr. Turnbull: That has been offered as our Exhibit "T" and I offer in evidence as Exhibit "U" a certified copy signed by the Clerk of the United States District Court, I beg the Court's pardon that is signed by the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit over the seal of the Court as to "appellants' statement of the point on which they intend to rely on the appeal", signed by Francis D. Cobb and Edward Fitzpatrick, attorneys for P. M. Jackson as trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt.

By Mr. Casey: Same objection, if the Court please.

By the Court: Overruled.

By Mr. Turnbull: If the Court please, we now offer in evidence as Heiser's Exhibit "V" a certified copy of the decision of the Ninth Circuit Court of Appeals in the case of P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff vs.
M. E. Heiser, No. 9356 April 30, 1940, certified to
223 by the Clerk of the Court of the Ninth Circuit over the Seal of the Court, being a printed decision as furnished by the Clerk of that Court, and that is offered as our Exhibit "V".

By Mr. Casey: If the Court please, we make the same objection to it.

By the Court: Overruled.

By Mr. Turnbull: I hand counsel an exemplified copy of the mandate of the Circuit Court of Appeals of the Ninth Circuit filed and entered June 19th, 1940, in the matter of Heiser vs. Woodruff, it is the mandate and is offered as our Exhibit "W" and it is signed by Mr. R. S. Zimmerman, Clerk of the United States Court for the Southern District of California, Central Division, as being a part of the records of his office and it shows to have been filed in his office on June 19th, 1940. That is offered as Heiser's Exhibit "W".

By Mr. Casey: To which we make the same objection, if the Court please.

By the Court: I will overrule the objection.

By Mr. Turnbull: The claimant Heiser offers by reference the order approving the trustee's bond, establishing the date of the record of the qualification of the trustee which was filed July 20th, 1939, being order approving trustee's bond.

224 By the Court: All right.

By Mr. Turnbull: I offer in evidence by reference the application of trustee, P. M. Jackson, sworn to the 3rd day of October, 1939, and it recites in the instrument entitled

application of trustee for allowance of expenses for which an appeal is being taken to the Circuit Court of Appeals for this District. Counsel has been objecting to it and now I am offering this to show the trustee made the report to your Honor, that he appeared before your Honor and wanted to take an appeal and asked for authority to proceed with the appeal and for the expenditure of funds necessary in the completion of said appeal and your Honor ordered the trustee to proceed.

By Mr. Casey: If it is the order allowing the trustee to appeal from the order of the District Court of the United States for the Southern District of California, that is all right.

By the Court: Was there a written order on it?

By Mr. Turnbull: Yes, sir, there was.

By Mr. Casey: Then my objection earlier this morning seems to be good.

By Mr. Turnbull: I offer this application for allowance of the expenses by reference.

By the Court: All right.

225 By Mr. Turnbull: I now desire to offer the opinion of this Court in this present case deciding over the signature of the present Honorable Referee, recites the petition last introduced in evidence October 4th, 1939, and recites that the trustee is authorized to appeal the case of Heiser vs. Woodruff, which instrument bears date of October 4th, 1939.

By Mr. Casey: It is incompetent, irrelevant and immaterial for the reason the order authorizes the trustee to take all steps that are necessary and does not say anything about the appeal.

By Mr. Turnbull: If the Court please, I am not taking any chances under any technicality, I want to show the trustee did have express authority.

By the Court: All right.

By Mr. Turnbull: That is the order filed October 4th, 1939.

By the Court: All right.

By Mr. Turnbull: And that is offered by reference.

By the Court: All right.

By Mr. Turnbull: At this time, I offer in evidence the petition by the bankrupt filed in this Court and it is signed by Leonard J. Woodruff by his counsel, Champion, Champion & Fischl, sworn to on the 22nd day of August, 1939, filed August 23rd, 1939, which ends with a prayer that the claim of M. E. Heiser be denied and the trustee authorized to attack said judgment that is attached to that, the
226 complaint and other matters that are already in evidence, I only offer the application, the exhibits were offered this morning.

By Mr. Casey: That is incompetent, irrelevant and immaterial.

By Mr. Turnbull: I want to show every one of the so-called objecting creditors joined with the trustee and with the bankrupt to attack this judgment.

By Mr. Casey: This is a self serving statement, that is all this is.

By Mr. Turnbull: This is an application asking authority by the bankrupt to attack this judgment in favor of Heiser.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial.

By Mr. Turnbull: I think it is proper for this record notwithstanding the fact that I have been contradicted as to what the instrument is.

By the Court: Overrule the objection, let it go in.

By Mr. Turnbull: They must accept the proof of that statement, it is an application of the bankrupt and it shows for itself.

By the Court: Let it go in for the purpose of showing

that the bankrupt joined in the prayer for an attack upon the judgment.

By Mr. Turnbull: That is offered by reference only. If the Court please, the claimant, M. E. Heiser rests at
227 this time. May it be understood and stipulated with respect to any objections made by the various parties hereto, various objectors that the claimant M. E. Heiser may have an exception to all adverse rulings and that the various objecting creditors may have an exception to all adverse rulings to those parties and may this also apply to the bankrupt's objections, if any.

By Mr. Casey: That is all right with us.

By Mr. Turnbull: The ruling of the Court shall apply to all of them.

By Mr. Fischl, of Counsel for Leonard Woodruff:

In this case Leonard J. Woodruff is a debtor and the trustee is not a party to any of this proceedings and if that question should arise we want it fully understood that this is a proceeding on behalf of the debtor.

By Mr. Turnbull: I stipulate that the rulings and proceedings had apply to all objecting creditors or anyone else.

By Mr. Casey: If the Court please, we offer in evidence a certified copy of the bill of lading dated August 9, 1928, and it shows for itself, and I might call your Honor's attention to the fact the bill of lading sets forth the value, a value of $500.00, and that is attached to the same instrument which was identified and referred to in Heiser's Exhibit "L".

228 By Mr. Turnbull: Is this part of the exhibit in the Heiser case?

By Mr. Casey: It is referred to in the Heiser Exhibit "L" on the second page, your Honor. Yes, it is.

By Mr. Turnbull: This is only part of it.

By Mr. Casey: That is right, your Honor. This is offered to contradict the extent of the judgment, the fact the

judgment should not be for $160,000.00, but should be reduced to the true value of the items mentioned here.

By Mr. Turnbull: At this time the claimant, M. E. Heiser objects to the introduction of any evidence in support of any and all of the objecting creditors objections: First, That the said alleged creditors are not parties, nor are any of them parties who may legally and properly object to the claim of the creditor, Heiser, there being in this case a trustee duly elected and qualified who has heretofore made the same objections unsuccessfully. The rule of law being that only when a trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim can an order be made permitting a creditor to act independently, and then only when the trustee himself has not acted. In this case the trustee has selected the forum to attack the Heiser judgment and has done so upon
229 the written application of the creditors now here objecting after an order of this Court duly made permitting and instructing the trustee to go to California and attack the Heiser judgment.

Second, That the creditors now objecting are bound by the result of the acts of the Trustee, Jackson, who has already objected and has heretofore tested the sufficiency of the Heiser judgment: that said Trustee Jackson, has attacked the Heiser judgment in an independent equity proceeding, and the Ninth *Circuit* Court has so held.

Third, That the objecting creditors here are estopped by the acts of their trustee, Jackson, towit: an estoppel by judgment.

Fourth, That the objections by the objecting creditors here are a collateral attack upon a final judgment, which is res adjudicata of the facts and of the law. In support of our objection in respect to the law, we offer and refer to 28 U. S. Code, amended, 531, and the cases judiciously interpreting that section.

Fifth, That full faith and credit is under the law to be given by this Court to the final judgments and decrees of other District Courts of the United States, towit: Courts of equal jurisdiction of equal dignity. That the claimant M. E.

Heiser objects to the introduction of any evidence in support of any objection made by the bankrupt, or the trustee, or any other person on the ground that the record now shows that the matters involved in the Heiser claim, and the objections thereto are res adjudicata, that the objectors are estopped by the judgment, first, by the judgment in favor of Heiser and against the bankrupt, Woodruff, and Second by the judgment as *unsuffessfully* attacked and so held by the United States Circuit Court of Appeals in the Ninth Circuit in the matter entitled, Jackson, Trustee vs. Heiser, a certified copy of which is now in evidence; also on the ground that full faith and credit must be given by this Court to the final judgment of the United States District Court for the Southern *Distriset* of California, and the judgments and decrees of the Ninth Circuit in this matter; further on the ground that there is no authority in the bankrupt to object after his trustee has objected unsuccessfully; further on the ground that the present offer of proof by the objectors is a collateral attack upon a final judgment, as has been decreed by the Ninth Circuit, stated in the opinion of Judge Sam Bratton, as heretofore referred to and cited.

That this Court cannot attack the wisdom of a final
231 judgment of a Court having jurisdiction of the person and of the subject matter, which is res adjudicata and which is plead in this case. I would like to be heard in support of the objections before your Honor rules upon them. I think we are to a vital place in the case.

(And here arguments of counsel was heard by the Court.)

By Mr. Turnbull: Will it be stipulated that the various exhibits which have been offered, and which have not been read into the record, may be considered as a part of the record?

By Mr. Cases: Yes, sir, that is right as to all of them.

By Mr. Turnbull: I would like for your Honor to read the record.

By the Court: Very well. I want to read the cases cited, especially some of them, and I desire to look over the decisions of the Circuit Court of Appeals, that is on the question of res adjudicata. The other point would be a

question of *whither* the decision of the Circuit Court on the Trustee's petition, whether that would foreclose the matter being taken up further now. My opinion under the decisions read on the default judgment the bankruptcy Court can't go into the claim. I am going to recess until in the morning at 9:00 oclock.

(Whereupon Court recessed until in the morning at 9:00 o'clock.

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232 Thereafter and on the 16th day of November, 1940, at the hour of 9:00 o'clock A. M., the Court met pursuant to recess taken on yesterday, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

By the Court: I have studied the matters heretofore presented however I am not ready to rule on them; I did not have one of the decisions which I thought I had with me. On the question of res judicata it seems to me it comes down to this question, whether the action of the trustee in that Court and the appeal was res judicata, and on that point I am not decided, but I still have that matter before me. I think the trustee in this proceeding, I do not think that would be binding here offhanded, however I am not ruling on that, if that is res judicata we are bound by it, however I did not have this proceeding before me last night, and I don't know how far the decision goes.

By Mr. Fischl: Can we agree on what was done?

By Mr. Turnbull: The nature and character of it has been decided by the Circuit Court of Appeals, they decided that it was an independent action and so held, and if the Court please, I have introduced exhibits in this matter and they are now before the Court and Exhibit "N" is

232 a notice of motion to vacate judgment to set aside default, to vacate orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by P. M. Jackson, trustee in bankruptcy for Leonard J. Woodruff, and to allow the trustee in bankruptcy to intervene, that is one of the exhibits that has been introduced here, and that

was filed in the District Court of the United States for the Southern District of California, Central Division in case No. 7256-C wherein M. E. Heiser was plaintiff and Leonard Woodruff and others were defendants, and if the Court please I desire to call your attention to this exhibit No. "N" of M. E. Heiser, and also the District Court rules of civil procedure for the District Court of the United States, and I desire to read Rule 7, Title 3. (Which was read to the Court.) We have the order of the Court on the motion of Mr. Jackson and Mr. Woodruff and we have the ruling of the Circuit Court that that action constituted an independent action.

By Mr. Casey: What are you talking about, a motion made by the bankrupt?

By Mr. Turnbull: I am talking about the motion made by Mr. Jackson.

By Mr. Casey: There was no formal motion made
234 on behalf of Mr. Jackson, the trustee, all of that was by stipulation.

By Mr. Fischl: May it be stipulated that the entire proceeding was upon written documents that were filed in the case and there was no oral testimony taken.

By Mr. Turnbull: There was no oral evidence introduced other than the affidavits that are here, and the record there is here, and it was upon those instruments and the argument of counsel.

By Mr. Fischl: My suggestion was there was no oral evidence heard by the Court.

By Mr. Turnbull: It was presented by the motion and the affidavits that are now in evidence and there was no oral evidence.

By Mr. Fischl: I understood there was no oral testimony offered and I thought maybe we could stipulate that and get the judgment ruled upon.

By Mr. Turnbull: I have everything in the judgment roll here.

By Mr. Fischl: That is your opinion. If in checking the

judgment roll we find anything else in the judgment roll we want it understood we will be entitled to introduce it in evidence.

By Mr. Meyberg: If the Court please, if you ask the Clerk to give you the transcript of the judgment roll he gave you the documents.

By Mr. Fischl: In Oklahoma he certifies to the
235 judgment roll and enumerates the instruments filed.

By the Court: The rule of the District Court governing civil procedure say anything about the judgment roll.

By Mr. Turnbull: I don't know, the record which I have the orders of Judge Cosgrave recites that all the affidavits shall be made a part of the record.

By Mr. Casey: Who made that order?

By Mr. Turnbull: I said Judge Cosgrave made that order and I have all the motions and affidavits here, and they have been introduced in evidence. There was pending before your Honor last night an objection to an offer of proof which consists of a certified copy of an instrument which the Clerk of this Court of California designated as Exhibit "E", I believe, in the matter of Heiser vs. Woodruff, which exhibit appears in one of the other exhibits and appears in the minutes and it shows that was part of the evidence offered as to value in that case, and I say that is an attempt now to re-try the issues before this Court and which were before that Court and we say that is res judicata.

By the Court: I said awhile ago under that question of res judicata the question in point is what was decided there in that proceeding instituted in the Court by
236 the trustee to set that judgment aside. From reading this instrument here and from the opinion of the Circuit Court of Appeals, it appears to me that question there has been settled and I don't believe the bankruptcy court can go into that.

By Mr. Fischl: Your Honor finds that the District Court of the United States out in California heard this case on its merits and passed on the merits of the case, then there must have been a trial of the case. Under the ques-

tions raised there, and the affidavits attached to that case or filed in that case the Court in effect said when he refused to set that judgment aside, in effect the Court held there was no fraud shown and the judgment remained a valid judgment. Those two questions were not before your Honor, the question is whether or not there has been a hearing before a Court of proper jurisdiction on the controversy, and it was determined upon its merits, that is the question here. The trustee said he had a good defense and he was given an opportunity to present it.

By the Court: And the Court said that matter had been settled in the former hearing.

By Mr. Fischl: It never was heard at all, there never was a time when any evidence was heard by any
237 Court at any time upon the merits of this controversy.

By the Court: That is true as to that first judgment but after that judgment was rendered which was a default judgment then the trustee here brought an action to set that judgment aside and that makes this proceeding res judicata. September 26th, 1939, was when the order was made denying the trustee's motion to vacate the judgment. I don't think I want to hear any more on that at this time. I think this Court is bound by that, however I am not barring you from going into it later, under that opinion I don't see where it would avail anything, I do not believe we can go into that. I will sustain the objection of Mr. Heiser.

By Mr. Casey: Exception, if the Court please. If the Court please, I would like to make a statement or offer of proof, we are now ready and able and offer to prove that the plaintiff in this case has made the statement himself and also his duly authorized agent, and that is evidenced by the bill of lading heretofore offered in this case, that the value of the sapphires, zircons, opals, jades and so forth involved in this case, which was the basis of his claim, was of a value of $500.00 instead of $30,000.00, as determined by the Court in the judgment. We also
238 are able to present proof that personal property assessed for the purpose of taxation in the State of

California of these various so-called jewels, and originally involved in this action was the sum of $50.00 instead of that which the Court found to be their value. We are also prepared to prove that this very plaintiff filed a claim for this very same merchandise which he set forth had a value of $1.00 an ounce or $30,000.00 instead of the total of $164,000.00, he said at one time it was worth $30,000.00 and another time $99,000.00 and another time $164,000.00. That was filed in the District Court of the Southern District of California in 1928 or 1929 and in February he filed a claim for their value, February of '29 I believe it was and later in 1932 the plaintiff testified in that proceeding that the property, as he claimed involved in this proceeding was the value of $30,000.00, and we also offer the testimony of Mr. Smith that the merchandise involved herein was not worth the sum of $164,000.00, they are not worth it and never have been worth that sum or any other sum near that figure and also by the testimony of Mr.
239 Mabery to the same effect and Mr. Wood and also by the Sheriff's return of the State of California that the merchandise, which included the so-called sapphires, zircons, opals, and so forth did not bring any such sum: that he received some thirty-five sacks and one sack, containing 125 pounds sold to a third party, a stranger to this proceeding for the sum of $150.00, and therefore the thirty-five or thirty-six sacks, based on that figure, would be worth about $5,400.00 instead of the sum of $50,000.00 and we make that as an offer of proof.

By Mr. Turnbull: If the Court please, which is resented and objected to by the creditor Heiser for the reason the evidence purported to be offered is already in the case of Heiser vs. Woodruff and here it would be res judicata and would be an effort to re-try that case and in respect to other defenses, if any has been stated here, the Court has already heard evidence after the entry of judgment but not upon the default in the rendering of the judgment. Also to the alleged defenses of Woodruff with respect to which the Court heard evidence after the entry default, but not upon default in the rendering of the judgment.

240 By Mr. Casey: We are prepared to prove the defendant Heiser or the claimant Heiser, I should say, did not own the merchandise which is the basis of this claim, that prior to the filing of this action in 1935 he had sold and disposed of that merchandise, that the Statute of Limitation had long since passed and was a complete bar to his action which is the basis of this claim that he did not own the property and was not a proper party, as he was not the owner of the property which was the basis of that judgment, and the Court now knows from the evidence offered here, the title to that property failed.

By Mr. Potter: If the Court please, that offer of proof is made for all parties.

By Mr. Turnbull: The action of Mr. Casey in making this offer may be deemed made on behalf of all the opposing parties and need not be repeated.

By the Court: Very well.

By Mr. Turnbull: To the offer of proof the claimant Heiser resents the same and objects to the same on the ground that it is an attempt to again offer in evidence and receive evidence by the Court, or seeking to induce the Court or to get the Court to give further evidence in that matter, the merits of which are res judicata as shown by the exhibits heretofore offered by the claimant, Heiser, and
241 the record in this case shows that the Court did permit evidence to be introduced for some eight days and some of this evidence now offered was offered in that case, and it would be an attack, a collateral attack upon a final judgment and an attempt to re-try that case.

By Mr. Casey: In support of my statement, Mr. Turnbull did not state the fact that judgment had not been entered until after the motion was decided. This judgment, Exhibit "F" shows a judgment was entered the 20th of March, 1939, that judgment was never vacated or set aside and the motion to set aside that judgment upon default proceeded along up to the time the Court made its order the 8th of June, and this judgment during all of that time was a judgment, there never was but one judgment and that was the one dated the 20th of March.

By Mr. Turnbull: The default was entered and the Court then heard evidence and rendered the judgment.

By Mr. Casey: No, you are trying to hedge. He said these defendants had an opportunity to offer evidence and that is untrue, if the Court please.

242 By the Court: I am going to sustain an objection to all this line of testimony at this time, the offer of proof and so forth, and we are now going to adjourn until November 18th, 1940.

(Whereupon Court recessed until Monday, November 18th, 1940.)

Thereafter and on the 18th day of November, 1940, the above styled and entitled matter came on for further hearing herein, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

By the Court: How about the Heiser claim?

By Mr. Turnbull: We want to wait until tomorrow morning to make an announcement, if the Court please.

By the Court: That is all right, I sustained the objection to the offer of testimony on the theory that it is—that the judgment or the attack on the judgment would be res judicata. Now I say if you want to introduce your testimony you may do so under that general order No. 22.

By Mr. Fischl: We have tendered our proof and I don't believe it is necessary to put our testimony on and prove what was said, as they will testify to that. I take it that the Court considers the testimony we tendered as we
243 can prove what we offered referred to and what we have offered to show, do you consider it on that basis?

By the Court: Yes, I think so.

By Mr. Fischl: We will ask the Court now for permission to take the deposition of Mr. Cobb, attorney for the trustee in Los Angeles, and make it a part of this tender of proof.

By Mr. Turnbull: To which the claimant, Heiser, objects for the reason this matter has been set from August up to now and the deposition of Mr. Cobb could have been taken at any time from August up to now, and furthermore counsel has not offered to prove anything by Mr. Cobb.

By Mr. Fischl: We just want to take that deposition and make it a part of this record on appeal.

By Mr. Turnbull: There is no application here to take the deposition, no surprise has been stated or pleaded and counsel knew what the testimony would be.

By Mr. Fischl: We were surprised at the Court's ruling, we had no idea the Court would rule as he did.

By Mr. Turnbull: There is no such thing as a legal surprise.

By Mr. Fischl: It is part of our tender of proof.

By the Court: That will be all right.

By Mr. Turnbull: In the interest of an early decision in this matter, I offer at this time to stipulate a definite
244 time and place for the taking of the deposition of Mr. Cobb, and counsel can fix an early date and I will be there and waive all technicalities and agree that the deposition may be taken without notice, at a time and place to be agreed upon.

By Mr. Fischl: We will fix the date before this hearing in concluded. That will conclude our tender of proof. I have spent some time since the Court's ruling on this matter as to whether or not this is res judicata, I have spent some time searching the decisions and I have a decision here of the United States Court that it is not res judicata, I do not know whether your Honor desires to hear that or not, if so, I would like to present that tomorrow morning.

By the Court: All right, further hearing on this matter will go over until tomorrow morning.

(After which other matters were taken up before the Court.)

245 Thereafter and on the 22nd day of November, 1940, at the hour of 1:30 P. M., the following further proceedings were had regarding the Heiser claim as follows:

By Mr. Fischl: As part of our tender of proof at this time, we offer to prove on behalf of the objectors, or the objector and the various objecting creditors to the Heiser claim, we ask the Reporter to mark for identification as the objector's Exhibit "2", and we offer this Objector's Exhibit "2" as a tender and offer of proof, and we expect if the Court permits us to do so, to have the same identified by the witness, and to prove that it is a prospectus or whatever it might be called with reference to stock in the Golden State Gem Company of Nevada, that it was prepared by the defendant Heiser for distribution to the public, and was distributed by him and under his instructions to the public generally for the purpose of inducing people to buy stock in the Golden State Gem Company of Nevada.

By Mr. Turnbull: If the Court please, we would certainly object to that on the ground it is an attempt to re-try the issues in the Heiser case, in the case of Heiser vs. Leonard Woodruff, which resulted in the judgment relied upon by Heiser as a final judgment and which has been referred to so much and which has been attacked
246 collaterally and otherwise by the trustee and others, and we say that judgment is now a final judgment and its validity cannot now be attacked, and this character of proof is inadmissible in any Court.

By Mr. Fischl: This tender of proof is what we expect to prove, if the Court will permit us.

(And here argument of counsel was heard.)

By Mr. Fischl: If the Court please, I have had a letter marked Exhibit "3", and we expect to introduce evidence to show that letter was written by Heiser and that is his signature.

By Mr. Turnbull: To which offer of proof the judgment creditor Heiser resents and objects on the ground it is an attempt to collaterally attack the judgment in this case and upon which Heiser relies and is an attempt to collateral-

ly attack the decision of the Circuit Court of the Ninth Circuit, and its decision in this very case, and it now becomes res judicata here inasmuch as the Circuit Court of the Ninth Circuit said to Mr. Jackson that he had his day in Court by an independent equitable action.

247 By Mr. Fischl: As part of our tender of proof we offer as part of our proof the affidavit of Francis D. Cobb, as our Exhibit here and expect to prove the statement as contained in the affidavit as true and the facts are stated as in the affidavit.

By Mr. Turnbull: Does this have reference to the matter in regard to a deposition that you referred to heretofore, when you said you desired to take the deposition of Mr. Cobb?

By Mr. Fischl: No, that is part of our proof.

By Mr. Turnbull: This is not an affidavit that you ever used in California?

By Mr. Fischl: That is right.

By Mr. Turnbull: It is something new.

By Mr. Fischl: It is an affidavit as to what happened before Judge Cosgrave upon the presentation of the application of the trustee to intervene.

By Mr. Turnbull: If the Court please, we object to it, it is an attempt to offer in this proceeding a summary affidavit purported to have been sworn to before the commencing of this proceeding and it is hearsay as far as this claimant is concerned, and the person signing the affidavit is not present or subject to cross examination and does not come within General Rule 22, and under any guise this is not testimony. Then it purports to be an attempt by Cobb to impeach the records of the District Court of the United
248 States for the Southern District of California with respect to matters had in the case of Heiser vs. Woodruff, 2256-C, an attempt to impeach the exemplified records of that Court as to what occurred before that Court at that time. I take it I could not come in after you make a record and by affidavit contradict that record any more than Mr. Cobb could, that is not the best evidence and Mr. Cobb is

trying to tell this Court something happened different to what the record contains, and it is not admissible under General Order 22 as being evidence.

By the Court: The judgment roll in evidence here in the proceedings brought by Mr. Jackson?

By Mr. Fischl: Mr. Turnbull introduced certain instruments which he says is the entire judgment roll.

By Mr. Turnbull: And if the Court please, as far as I know it is.

By Mr. Fischl: First the gentleman does not know what he is talking about.

By Mr. Turnbull: I just understand enough to object to it.

By Mr. Fischl: I agree with you one hundred percent. This is an affidavit and we want it made a part of our record to show what happened.

249 By the Court: I will reserve my ruling on all of these offers at this time.

By Mr. Fischl: As a further tender of proof we offer in evidence Exhibits "5", "6", "7" and "8". These exhibits will show, if the Court please, what was before the Court in the case of Jackson vs. Heiser, they show the issues and the brief and what was really involved in the case.

By Mr. Turnbull: Who are you offering it for?

By Mr. Fischl: I am offering it for and on behalf of my client.

By Mr. Turnbull: To which offer and avowal of proof the claimant, Heiser, objects on the ground that the instrument is not certified. It is not an exemplified copy, is not subject to be used as proof in anything in this case at all, and we make the same objection to Exhibits "5", "6", "7" and "8", and is an attempt to impeach a final judgment of a Court of competent jurisdiction.

By Mr. Fischl: That is all the offer of proof we have. That is the proof we would desire to offer if we were given an opportunity to be heard.

(And here further argument was had.)

(Whereupon Court recessed until November 26th, 1940, at the hour of 9:00 o'clock A. M.)

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250 Thereafter and on the 26th day of November, 1940, at the hour of 9:00 o'clock A. M., Court met pursuant to recess heretofore taken, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

(And here arguments of counsel were heard by the Court.)

By Mr. Fischl: If the Court please, I object to his reading from the brief for the reason he objected to my reading from a brief unless it was introduced, and I object to it.

By Mr. Turnbull: I am reading from the brief, yes sir, a copy of the one that Mr. Fischl introduced or offered in evidence.

By the Court: Go ahead. I reserve my ruling on this matter at this time anyway. As I have stated here several times, the whole question on the point of res judicata, as against the trustee, is what was determined there at that hearing on the trustee's motion to vacate the judgment there in California, the whole judgment. In reading this opinion of the several suits and the affidavits and proceedings had thereon, it does not appear as far as the trustee's suit is concerned that any decision was had on the
251 merits. I take it under this Liten case, the Bankruptcy Court, even when a judgment has been entered against the bankrupt, the Bankruptcy Court has a right to go into the underlying claim and this judgment on which M. E. Heiser's claim is based was a default judgment. There was testimony taken afterwards on the question of the value of the gems, but the Court held that was not a final judgment rendered on June 29th, and after studying it over I believe my former ruling should be changed on the question of res judicata, and the objection will be overruled, Mr. Turnbull.

By Mr. Turnbull: The objection heretofore made by the

objector Heiser, wherein they attempt to impeach the judgment, that objection is now overruled?

By the Court: Yes.

By Mr. Turnbull: The various avowals of proof are made and in the event we are right, the record should be complete, counsel offered certain documents—

By Mr. Fischl: Doesn't that put us back where we have to offer proof?

By Mr. Turnbull: If the Court please, you said you would rule later and if it should be found we are correct,
252 and your Honor's original order is correct, you would still leave the record unruled on, on various things, there are six or eight offers acted upon.

By Mr. Fischl: That is true.

By Mr. Turnbull: These various offers or avowals are made and I want to withdraw my objection as to Exhibits "5", "6", "7" and "8" to the extent that the Court might examine those exhibits to determine as to the validity of the judgment, but not as to the facts therein stated.

By Mr. Fischl: We offered these exhibits for all purposes, he said he is willing now for the Court to consider Exhibits "5", "6", "7" and "8" for special reasons, or for specific purposes I should say, we think they are in for all purposes and they are so offered.

By Mr. Turnbull: To show what was before the Court, but due to the fact that the exhibits are not certified to, that is the reason we were not waiving further objection to the exhibits, only to show the Court what was before the Court in that matter. As to case 9359, Jackson vs. Heiser, counsel offered that part of the record together with the briefs and I originally objected to it for the reason it was not properly exemplified or certified for the reason there was no proper foundation laid for it, I think
253 that objection is good, but I think the Court should examine that instrument to see what was before the Court, but I stand on my objection and declaration otherwise. To the avowals and offers of proof as made by the

documentary proof offered by counsel, marked Exhibits "1" to "8", to all of those offered, both oral and documentary, the claimant Heiser objected on the ground it is an attempt to impeach the finality of a judgment, to-wit: the final order or judgment in the case of M. E. Heiser vs. Leonard Woodruff, and others, and the finality of the judgment in the case of Jackson vs. Heiser, No. 9356, in the Circuit Court of Appeals, the Ninth Circuit, and the other exhibits are an attempt to collaterally attack the judgment after it has been once or twice collaterally attacked and once by direct attack on each and every ground heretofore urged, with the additional objection as to objector's exhibits "5" to "8", that no foundation has been laid for their introduction and they are incompetent in this matter as no foundation has been laid. If they are overruled counsel can go ahead and prove his case.

By the Court: Overruled.

254 By Mr. Fischl: I presume it is necessary to first determine just how we will proceed on the Heiser claim. You know Mr. Casey and Mr. Filer were here from California for some week or more and they remained here until your Honor made the ruling heretofore, and they left with the request that they be permitted to be heard if your Honor changed his ruling. We have two witnesses from California, and they tell me they must leave today, and there is some documentary proof that your Honor would like to examine into on this Heiser matter, we are making those suggestions to your Honor, we are amenable to your Honor's suggestion.

By the Court: We will now recess until 1:30 o'clock today.

(Whereupon Court recessed until the hour of 1:30 o'clock.)

255 Thereafter and on the 26th day of November, 1940, at the hour of 1:30 o'clock P. M., Court met pursuant to recess taken for the noon hour, after which the following further proceedings were had herein:

By Mr. Turnbull: Do I understand, Mr. Fischl, you are now proceeding after the objections heretofore made have been overruled and under the new ruling of the Court you are now offering the proof in the Heiser claim?

By Mr. Fischl: That is right, and the offers of proof heretofore made are a nullity.

By Mr. Turnbull: Will it be stipulated that to all of this evidence offered that the same objections heretofore made as to any evidence which may be tendered or which may be deemed to have been made, in other words, the same objections heretofore made may be considered as made now when the testimony is offered?

By the Court: Yes.

By Mr. Turnbull: And if the same rulings are made we may have our objections thereto.

By the Court: Yes.

By Mr. Turnbull: And it is not necessary to repeat the objections to each question asked these witnesses or any other evidence which may be offered.

By the Court: That is right.

256 By Mr. Turnbull: As to that I will rest on it, however, I may have further objections as they come along, is that your understanding, Your Honor?

By the Court: Yes, that is right.

By Mr. Fischl: And whatever proof is offered by either objector inures to the benefit of the other objectors.

By the Court: Yes, that is my understanding, that is right.

(And here was offered part of the direct testimony of Walter Calvin Smith, who was examined by Mr. Fishl, who

stated to the Court that Mr. Smith had to return to California tonight, and the Court said, upon inquiry by Mr. Turnbull, as to any cross examination of said witness Smith: "If Mr. Smith does not return for cross examination at the proper time I will strike the testimony offered by Smith." Smith did not return, and the Court said: "That Walter Calvin Smith's testimony is not a part of the record and is not considered by the Court (This Referee) for the reason that Smith did not return for cross examination." Smith was only examined in part as to the Golden State Gem Company, as to its organization and its capital stock, shares, etc.)

(Court thereupon recessed.)

State of Oklahoma, County of Carter.

I, O. E. English, Court Reporter Twentieth Judicial District Court of Oklahoma, and the reporter who took the proceedings in shorthand during the hearings before
257 Judge Geo. F. Clark, Referee in Bankruptcy, in the matter of Leonard J. Woodruff, Bankrupt, No. 7623, on November 15th, 18th, 22nd and 26th, 1940, hereby certify that the within and foregoing is a true and correct transcription of my notes as taken on said days; that I took the proceedings in shorthand during the progress of said hearing, and thereafter transcribed the same, and that the above and foregoing is a true and correct copy thereof, and I do hereby so certify.

Witness my hand as such reporter this the 2nd day of August, 1944.

O. E. English, Court Reporter.

HEISER EXHIBITS.

[Exhibit A, proof of claim of M. E. Heiser, is identical with the proof of claim which appears at page 8.]

[Exhibit B, supplement to proof of claim of M. E. Heiser, is identical with the supplement to proof of claim which appears at page 11.]

[Heiser Exhibits C to T are Proceedings Composed of Complaint etc. Filed in Case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. The Captions, Appearing on the Original Exhibits, are Therefore, Omitted from the Printed Record.]

[Exhibit C, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit B to the objections of Willie Mae Woodruff to the allowance of claim of M. E. Heiser, which appears at page 45.]

Heiser Exhibit D.

[Summons.]

The President of the United States of America.

To Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, Golden State Gem Company of California, a corporation, Golden State Gem Company of Nevada, a corporation, New Golden State Gem Company, et al. (Does)

Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the District Court of the United States, in and for the Southern District

of California, Central Division, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons), in the office of the Clerk of said County in the City of Los Angeles, County of Los Angeles, State of California, within twenty days after the service on you of this summons, or judgment by default will be taken against you, and you are hereby notified that unless you appear and plead, answer, or demur, as herein required, the plaintiff will take judgment for any money or damages demanded in the complaint as arising from contract or will apply to the Court for any further relief demanded in the complaint.

Witness, the Honorable Geo. Cosgrave Judge of the District Court of the United States in and for the Southern District of California, Central Division, this 21st day of April, in the year of our Lord one thousand nine hundred and Thirty-seven and of our Independence the one hundred and sixty-first.

R. S. ZIMMERMAN, Clerk,
(Seal) By L. B. FIGG, Deputy Clerk.

United States Marshal's Office, Southern District of California.

I hereby certify and return, that I received the within summons on the 31st day of January, 1939, and personally served the same on the 31st day of January, 1939, on Leonard Woodruff, by handing to and leaving a true and correct copy thereof, together with a copy of the complaint, with Mr. Woodruff, Jr., an adult person, who is a member or resident in the family of Leonard Woodruff, said defendant named therein, at the dwelling house and usual place of abode of said Leonard Woodruff, located at 2446 Inverness Street, City of Los Angeles, County of Los Angeles, in the said District.

ROBERT E. CLARK, U. S. Marshal.
By EDWARD L. FAUPEL, Deputy.

Los Angeles, California, February 3rd, 1939.

(Endorsed) Filed Feb. 9, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Certificate and Affidavit of Service.

State of California, County of Los Angeles, ss.

I hereby certify that I received the alias summons in the above entitled action on the 31st day of January, 1939, from the Office of the United States Marshal in the above entitled district and personally served the same on defendant Leonard Woodruff on the 31st day of January, 1939, by delivering to and leaving copy of the said writ and a copy of the complaint in the above entitled action attached thereto at his dwelling house at 2446 Inverness Avenue, Los Angeles, California, with some person of suitable age and discretion then residing therein, to-wit: The son of the said defendant, a man of about 23 years or more of age. That the facts of said service are as follows:.

On January 31, 1939, at approximately 6:30 P. M. I drove to the home of the said defendant herein, Leonard Woodruff, at 2446 Inverness Avenue, in Los Angeles, California, accompanied by J. Vic Wallen with whom I drove up the driveway onto the premises stopping my car in the compound near the garage. We then proceeded up a stairway to the level of the home making our way to a back door through which voices could be heard. After ringing the doorbell a man, whom I was informed and believe and therefore allege to be about 23 years or more of age, raised the inside curtain from inside the house and peered through the glass and screen doors and after seeing us opened the inner door, leaving the screen door fastened. I asked him if Mr. Leonard Woodruff, defendant in this action, was in and he replied that he was out of town and would not return home for several days. I asked him then if he was Mr. Leonard Woodruff's nephew and lived there and he said "No, I am his son." I then told him I had some papers I wished him to deliver to his father. I offered him a copy of the summons and complaint but he stated that he would not take them. I then thrust a copy of the summons and complaint through a large hole in the screen of the door with my left hand, at the same time displaying the original summons in my right hand, touched his folded right arm with the copy of the summons and complaint and he let them fall to the floor inside the house. I then told him I was a Deputy United

States Marshal and had been instructed by my superior to deliver to Mr. Leonard Woodruff or in his absence to leave copies of the summons and complaint in this action at his dwelling house with some person of suitable age and discretion then residing therein, and that I should like him to deliver them to his father, Mr. Leonard Woodruff. He replied that he would not do it; that he would burn them first and that he would see that his father would never see them. Whereupon I suggested that his plan would probably be an unwise procedure and that he should give them to his father, Leonard Woodruff, and then let him take whatever action he thought best. With this I said goodnight and we departed, leaving the said copy of the summons and complaint with the said party at the said house of the said defendant, Leonard Woodruff.

Dated February 18, 1939.

EDWARD L. FAUPEL,
Deputy United States Marshal.

Subscribed and sworn to before me this 18th day of February, 1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal)

State of California, County of Los Angeles, ss.

Edward L. Faupel, being by me first duly sworn, deposes and says: that he is the Deputy U. S. Marshal who served the summons and complaint in the above entitled matter, that he has read the foregoing certificate and affidavit of service and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

EDWARD L. FAUPEL.

Subscribed and sworn to before me this 18th day of February, 1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal)

(Endorsed)

Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit E.

Affidavit.

State of California, County of Los Angeles, ss.

Comes now Leonard J. Meyberg, attorney of record for plaintiff herein, and being first duly sworn, deposes and says:

That no answer or reply in behalf of defendant Woodruff has been served upon him or his office, or the plaintiff in the above entitled action. Dated: February 21, 1939.

LEONARD J. MEYBERG.

Subscribed and sworn to before me this 21st day of February, 1939. A. W. Brunton, Notary Public in and for said County and State. (Seal).

(Endorsed): Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Praecipe.

To the Clerk of said Court:

Sir: Please enter default against defendant, Leonard Woodruff.

LEONARD J. MEYBERG,
Attorney for plaintiff.

Feb. 21, 1939

(Endorsed): Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

[Entry of Default.]

In this action Leonard Woodruff having been duly and regularly served with process, and having failed to serve or file his plea, answer, or other defense in conformity with the requirements of the Summons, and the legal time for pleading or answering having expired, and no plea, answer, or other defense having been filed or served, now, on the written request of the plaintiff's attorney, filed in the case,

the Default of said Leonard Woodruff in the premises is hereby entered according to law.

Attest my hand and the seal of said District Court, this 23rd day of February A. D. 1939.

R. S. ZIMMERMAN, Clerk,
(Seal) By R. B. CLIFTON, Deputy Clerk.

[Exhibit F, judgment, is identical with exhibit A to proof of claim of M. E. Heiser, page 10.]

Heiser Exhibit G.

Notice of Motion to Set Aside Default and Default Judgment.

To the Plaintiff above named and Leonard J. Meyberg His Attorney:

You and Each of You will please take notice that on Monday the 10th day of April, 1939, at 10:00 A. M. of said day or as soon thereafter as said matter can be heard at the Courtroom of the Honorable Judge George Cosgrave in the New Federal Building, Temple, Main and Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, defendant Leonard Woodruff will move said Court for its order vacating and setting aside the default and the default judgment entered herein on the 20th day of March, 1939, and permitting defendant to file his answer herewith served.

That said motion will be made upon the following ground to-wit:

(1) That said default and default judgment were entered prematurely and without authority of law;

(2) That said default and default judgment were entered through the surprise of this defendant, his inadvertence, mistake and excusable neglect in that he was not actually notified that his son was served with process in this case until after the within default judgment was entered.

(3) That under the law when for any cause, process has not been personally served as in this case, the Court may allow such defendant, when justice demands, to answer to the merits of the original action.

Said motion will be based upon this Notice, the affidavit of defendant Leonard Woodruff, the further affidavit of Edward Fitzpatrick, one of the attorneys of record herein, and the affidavits of Howard Woodruff, Eugene Aycox and William De Vote, all of which affidavits are filed herewith, the verified answer of the defendant served herewith and upon all other records and files of the above entitled cause and the following other Court proceedings; Case #5587-J, United States District Court, Case #13393-J in Bankruptcy United States Court; Case #276469 in the Superior Court of Los Angeles County, State of California.

Dated this 27 day of March, 1939.

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for Defendant Leonard Woodruff.

Motion of Defendant Leonard Woodruff to Set Aside Default and Default Judgment.

To the Plaintiff above named and Leonard J. Meyberg, his Attorney:

Now comes defendant Leonard Woodruff, pursuant to Notice herewith attached, and moves the above entitled Court for an order vacating and setting aside the default and default judgment heretofore entered herein in favor of plaintiff and against this defendant on the 20th day of March, 1939, and permitting this defendant to file his answer herewith served upon the following grounds, to-wit:

(1) That said default and default judgment were entered prematurely and without authority of law.

(2) That said default and default judgment were entered through the surprise of this defendant, his inadvertence, mistake and excusable neglect in that he was not actually notified that his son was served with process in

this case until after the within default judgment was entered.

(3) That under the law when for any cause, process has not been personally served as in this case, the Court may allow such defendant, when justice demands, to answer to the merits of the original action.

(4) That in the furtherance of justice as evidenced by the affidavit supporting this motion, and the records and files of this case and other cases in the notice of motion referred to, defendant Leonard Woodruff ought to be allowed to file his verified answer herewith submitted and proceed to trial on the merits, a copy of which motion is herewith served upon you.

Dated: March 27, 1939.

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for defendant Leonard Woodruff.

(Indorsed)

Received copy of the within ..... this 29 day of March, 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Mar. 29, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit H.

Affidavit of Attorney Robert L. Beveridge in Answer to References to Him in Plaintiff's Affidavit of Opposition to Defendant Leonard Woodruff's Motion to Set Aside Default and Default Judgment.

State of California, County of Los Angeles, ss.

Robert L. Beveridge upon oath deposes and says that he is an Attorney duly admitted to practice in the State Courts of California, and in the United States District Court of the Southern District of California, Central Division.

That certain statements concerning affiant have been called

to his attention as having been made in the affidavit of plaintiff in this action in connection with the opposition to defendant Leonard Woodruff's motion to set aside default and default judgment at pages 10, 11, 13, 14 and ending at line 2 on page 15 thereof.

That with reference to the truth or falsity of said statements, affiant deposes and says:

Denies that he ever had any conversation, directly or indirectly with defendant Leonard Woodruff with reference to the service of summons and complaint in this case; denies that he has acted as Attorney for Leonard Woodruff for the past several years or at all, or as Attorney for any of the other defendants except that when this action was first started, to-wit: Walter Calvin Smtih early in the month of July, 1935, employed him to enter his voluntary appearance in this action and file an answer when plaintiff withheld the service of process, in which respect, affiant states that nothing was done under said employment because plaintiff and his attorney refused to furnish affiant as said attorney with a copy of the eighteen page story-book complaint filed herein; that said employment was thus suspended until on or about the 10th day of March, 1939, when said affiant appeared herein as attorney for defendant Smith and moved for a dismissal of said cause as to defendant Smith under Section 581a Code of Civil Procedure for want of prosecution because plaintiff failed to make service or any effort to make service on this defendant within three years from the date of starting the action.

That with reference to the statements of plaintiff on page 13, 14 and 15 of his affidavit, same really being the write-up of his attorney Leonard J. Meyberg with regard to the withdrawal by this affiant of the file of the State Court case #....., this affiant alleges the true facts to be regarding the same:

At or about the time, namely April 16, 1932, this affiant was then acting as attorney for Hubert F. Laughran, Trustee in Bankruptcy of the bankrupt estate of Golden State Gem Company of California; that a hearing was then pending before Referee in Bankruptcy Earl E. Moss on an objection to the claim of plaintiff herein in the amount of

$30,250, which this plaintiff sought to have allowed against the assets of the said bankrupt estate; that in presenting proof showing that said claim was not a just claim, this affiant as attorney for said trustee had to take full responsibility for the safe keeping of said court record as it was needed as documentary evidence at said court hearing objecting to plaintiff's said claim; that this affiant knew that plaintiff or his attorney had previously withdrawn and attempted to secret said file themselves and place it where it could not be produced as documentary evidence at said court hearing before Referee Earl E. Moss, but the reason that they did not want it produced in court by this affiant and to cause so much trouble about it, and made all the innuendoes even at this late date, was because said court file #..... showed conclusively what happened to this plaintiff's gem material, being the same that he seeks to recover for herein, namely that title to it never vested in the bankrupt corporation as an asset, but was by plaintiff sold, transferred and consigned to the Golden State Gem Company of Nevada a different entity than the one in bankruptcy, and that subsequently thereafter through the court proceedings of said State case #..... had been levied against and sold at an execution sale as the property of the Golden State Gem Company of Nevada, and not as plaintiff's property, to partly satisfy a judgment recovered by Leonard Woodruff against said Nevada corporation and others.

That after proving up and having said claim disallowed, this affiant explained to Clerk L. E. Lampton that he had to use such extreme and precautionary measures for the safe keeping of said file until it was produced at said hearing, and was exonerated from any wrongdoing whatsoever, and in fact complimented for having the courage to invite the Sheriffs under court order to search his office and defy rules of general routine in the interest of seeing that justice was assured the real creditors of the bankrupt estate in a United States District Court proceeding, including defendant Leonard Woodruff.

As stated at line 21 of page 14, affiant denies that he communicated with Attorney Fitzpatrick in regards to any act or thing, or in regard to any proceeding whatsoever of this

case; denies that defendant Woodruff had anything to do with the motion of Walter Calvin Smith for dismissal herein or that the said motion had any connection whatsoever with any proceedings whatsoever involving the defendant Leonard Woodruff.

That with reference to the affidavit of Paul M. Joseph, affiant states that the papers referred to at line 13, page 2 of his affidavit had no connection whatsoever with anything this affiant was doing in this case other than as attorney for Defendant Walter Calvin Smith.

Affiant further denies that he had any telephone conversation in which the name of Woodruff was mentioned, or saying that the son of Woodruff was served, or that any telephone conversation whatsoever was had as alleged by Paul M. Joseph within the hearing of the said Paul M. Joseph by this affiant, but that if Paul M. Joseph had been so eavesdropping outside affiant's private office door, he certainly was having a "pipe-dream" as to what was being said by affiant over the telephone.

That affiant further deposes and says that he has learned that the papers in question were not received in the office of Leonard J. Meyberg the next morning as alleged by said Paul M. Joseph, namely the motion of Leonard Woodruff to set aside default and default judgment, together with supporting affidavits. As shown by the record herein, said papers were personally served by a representative from Mr. Peterson's office in the office of Leonard J. Meyberg and not as set forth in lines 20 to 29 in affidavit of Paul M. Joseph on page 3.

Affiant further deposes and says that in making misstatements as to facts, plaintiff and his counsel should at least check back as to the manner in which anything is claimed to have been done and the records won't be quite so bad against them.

Affiant further deposes and says that with reference to that part of plaintiff's affidavit alleging that he retained Robert L. Beveridge as his attorney, affiant admits that in the early part of 1935, prior to the filing of this complaint July 11, 1935, plaintiff consulted affiant as an attorney about

the facts of this action, but denies that he was ever employed by plaintiff for the reason that this affiant at said time and on a number of occasions since, had advised plaintiff that he did not believe, in view of all the circumstances, factual, legal, equitable and otherwise, he could under any conditions state a good cause of action against any of the defendants founded, among other things, on any of the allegations set forth in plaintiff's complaint.

Affiant further states that he had a conversation with another attorney with reference to said advice, at which time plaintiff offered $100.00 to affiant to prepare a complaint in spite of the fact that it was affiant's opinion that no cause of action would lie; that through said other attorney plaintiff promised to pay said $100.00 for the preparation of said complaint to affiant in the hope that even though no good cause of action could be stated, a proposition of settlement through affiant as his attorney would be forthcoming from one of the principal defendants who plaintiff stated at said time was financially responsible, namely Leonard Woodruff; that although the promise of said $100.00 was made, it never actually was paid, nor was said complaint prepared, nor said employment of affiant actually *consumated*; that said affiant does actually remember payment to him by plaintiff, in the presence of Walter Calvin Smith of the sum of $10.00 sometime in 1934 or the early part of 1935, when plaintiff was stopping either at the Alexandria Hotel or Hayward Hotel; said money having been paid in the Jewel Craft on Seventh Street near San Pedro, and a promise also having been made by plaintiff to present affiant with a rare specimen of his birthstone, namely, a large specially cut rare opal, at which time instructions were left with Walter Calvin Smith, a cutter, to mount the same and present to affiant; that said gift was never presented as promised and said $10.00 although it did not constitute payment in full for affiant's advice, closed any further relationship of attorney and client between this affiant as an attorney and plaintiff as client; that from that time to this day, plaintiff has never consulted affiant in any matter in connection with this case, but on numerous and diverse occasions as to the operations of plaintiff in this country, affiant has been consulted by the following persons:

Attorney Oscar Samuels, San Francisco, as attorney for Mrs. Lawler in the note case herein above referred to;

Peter J. Cribbin Investigator, department of Investment, Division of Corporations, State of California, 403. State Building, 217 West First Street, Los Angeles;

.....of the Bureau of Immigration Department, Federal Building, Los Angeles, and a number of attorneys and other persons who affiant does not remember.

That all of said persons inquired of affiant as to the merit, if any, of plaintiff's case pending herein, showing that plaintiff had been including the alleged claim herein as an item of value, giving it as financial reference and as an item of unfinished business, both to get a permit to sell stock in other corporate enterprises and to show alleged *justifable* reason for attending to unfinished business in the United States, namely this case, none of which, from the record appears thus far to have required the personal attendance or attention of plaintiff, but from the record appears to have been ably developed without anything actually being done by plaintiff personally, but only by his counsel and associate counsel as appears from the various petitions, affidavits and orders herein filed and by the Court issued.

Further affiant sayeth not.

ROBERT L. BEVERIDGE.

Subscribed and Sworn to before me this 19th day of April, 1939. Gyneth Riley (Seal). Notary Public in and for said County and State.

State of California, County of Los Angeles? ss.

Affidavit of Service on Attorney.

Edward Fitzpatrick being first duly sworn upon oath deposes and says; that he is one of the attorneys of record in the above entitled action for defendant, Leonard J. Woodruff; that on April 19th, 1939, he served on Leonard J. Meyberg the attorney for the plain..... in the above entitled action the *foegoing* affidavit of Leonard J. Woodruff, Robert L. Beveridge, Herman C. Woodruff, Jack Thomas, Edward D. Perkins, E. Poulson, Frank B. O'Connor, Seth Dixon,

W. C. O'Connor, Paul Metcalf, Gobel Zeimer, Marco Benveniste, Adolph Stack, by leaving copies thereof with Paul M. Joseph an associate of Leonard J. *Meyerberg* and delivering them to said Joseph at the office of said Attorney Meyberg room 403 Lane Mortgage Building, 8th and So. Spring sts. Los Angeles, California, at the hour of 4:50 O'clock P. M. Mr. Joseph being the person in charge thereof.

EDWARD FITZPATRICK.

Subscribed and sworn to before me this 20th day of April 1939. E. A. Loyd, Notary Public in and for the county of Los Angeles, State of California. (Seal).

(Indorsed).

Filed Apr. 20, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit I.

Reply in Opposition to Defendant Woodruff's Additional Points and Authorities on His Motion to Set Aside Default.

The only matter before this Honorable Court is a motion of defendant Leonard Woodruff to set aside a default and default judgment. When the said motion of said defendant Woodruff was called for hearing on April 10, 1939, Ames Peterson, Esq., one of the attorneys for said defendant Woodruff on said motion asked leave of this Honorable Court to file additional points and authorities on said motion, and this leave was granted him, allowing plaintiff an opportunity to answer the same. The minutes of this Court show that such order was made; a stipulation extending time to file such points and authorities was entered into at the request of said counsel for defendant Woodruff upon the claim of pressing business, and on April 19 defendant Woodruff served his additional points and authorities, but accompanying the same and in addition thereto said defendant Woodruff delivered to plaintiff at said time, twenty-two Affidavits in loose-leaf, unbacked form, purporting to be in support of defendant Woodruff's said motion. We submit that no authority to file additional affidavits was

granted, nor was any permission asked to file same at the time the motion was called for hearing or at any other time. Upon the filing of the additional points and authorities only, the matter was to be submitted.

On March 29, when the written motion of defendant Woodruff, and notice of said motion, were served and filed, certain affidavits accompanied the same in support thereof. No further papers were served or filed by said defendant in support of a motion at or prior to the time the motion was called for hearing. The request of Mr. Peterson, attorney for Mr. Woodruff, was merely to file additional written points and authorities and no mention was made of any additional affidavits. We submit that these affidavits constitute redundant, immaterial and insulting matter, irregularly filed without permission obtained therefor and could be only for the purpose of attempting to confuse this simple matter before this Court. We submit that the said affidavits filed in behalf of the said Leonard Woodruff after the hearing on April 10, should not be considered on this motion and should be stricken from the record, and that the motion should stand upon the papers originally filed and served in support thereof.

While entirely foreign to any issue before this Court, nevertheless because of the seriousness of the charge made by defendant Woodruff and his counsel, Beveridge and Fitzpatrick, and the complete falsity thereof, plaintiff's counsel feels that it is incumbent upon plaintiff to set up the facts under oath which will indicate to this Court the lack of equity existing as to defendant Woodruff and the length to which he is willing to go in his attempt to confuse the issue now before this Honorable Court.

In the affidavit of Attorney Robert L. Beveridge, served upon plaintiff's attorney April 19 in behalf of defendant Woodruff on this motion, it is stated that the plaintiff's presence in this country has been questioned by Immigration authorities and that plaintiff has used the pendency of the present action as an excuse to remain in these United States (page 6 of said affidavit). In the Second Affidavit of defendant Woodruff, served upon plaintiff's counsel on April 19, said defendant Woodruff swears on page 4, *line* 11, "the

facts being that plaintiff has merely used the pendency of this litigation according to positive knowledge of this defendant . . . . for the further purpose of over-staying his passport as an alien in this country, from time to time over a period of the last several years." In the serious charge made under oath by the said defendant Woodruff and the said Beveridge that plaintiff has deliberately used the pendency of this litigation according to their positive knowledge as a basis for over-staying his passport as an alien in this country from time to time over the last several years. These charges are of a serious nature and involve not only the plaintiff but the Government of these United States and the dignity of this Court, to the extent that plaintiff and his counsel feel that these charges cannot be permitted to go unanswered, even though plaintiff contends that such charges, together with all other allegations of the affidavits in which they are contained, are not properly before this Court upon this motion. For the purpose of refuting these false accusations the plaintiff submits herewith his affidavit denying the said charges *catagorically*, and setting up the facts as to his passport, his entry, and his presence in these United States. This affidavit of plaintiff M. E. Heiser is as follows:

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., Defendants. No. 7256-C.

Affidavit of M. E. Heiser.

State of California, County of Los Angeles, ss.

M. E. Heiser, being first duly sworn, deposes and says:

That he has read the Affidavit of Robert L. Beveridge filed in this action. That the said Robert L. Beveridge was employed by affiant and affiant stated his case to him as set forth in the affidavit of affiant on file herein. That said Beveridge at no time stated to affiant that this affiant had no case, but on the contrary informed affiant that his case against the said Woodruff was "iron-clad", and that there could be no defense to it. That affiant employed the said

Beveridge until such time as he was informed that the said Beveridge was in league with the said defendant Woodruff, after which he had no dealings with him. That affiant has never released any privilege or been asked so to do as between himself as client and the said Beveridge.

That affiant has read the affidavit of the said Beveridge to the effect that this action was filed to show alleged "justifiable reason for attending to unfinished business in the United States." Affiant states that the foregoing statement of the said Beveridge is false and untrue; that affiant's presence in the United States has never at any time been questioned by anyone, officially or otherwise, or by Governmental agent or otherwise; that affiant is the holder of Passport of the United Kingdoms of Great Britain, etc., No. 54270, issued to him at London, England, August 7, 1929; that said passport has been renewed and is valid until August 7, 1939; that the said passport carries Immigration Visa No. 7382 dated September 24, 1930, issued by J. E. Callahan, American Consul General at London, England, and shows the last arrival of affiant at New York December 24, 1936, upon presentation of Re-entry Permit No. 1068886 to the Immigration Inspector at New York; that affiant carries Immigration Identification Card, United States Department of Labor, No. 719432, issued at London, England by the American Consulate on September 24, 1930, which identifies the bearer of "Immigration Visa No. 7382" issued by said Consulate, and that the said identification card is duly signed by Immigration Inspector H. S. Manley at New York, his port of entry.

Affiant alleges that the said Beveridge has been fully informed as to affiant's status in the United States and that the said allegation in the said Affidavit of the said Beveridge that affiant filed this action to show alleged "justifiable reason for attending to unfinished business in the United States" is merely a dastardly attempt upon the part of the said Beveridge to embarrass and humiliate this affiant before this Honorable Court, but the said Beveridge has no basis or grounds whatever in truth or in fact upon which to base the said allegation.

That in the Affidavit of Leonard Woodruff, defendant

herein, on page 4 at line 11, said Woodruff swears as follows: "the facts being that plaintiff has merely used the pendency of this litigation, according to positive knowledge of this defendant, ... for the purpose of overstaying this passport, as an alien in this country, from time to time over a period of the last several years;" affiant states that the said allegation by the said defendant Leonard Woodruff is wholly false and untrue. Affiant denies specifically that he has at any time or in any manner or at all used the pendency of this litigation for the purpose of overstaying his passport, or for any purpose with reference thereto, or as an alien in this country from time to time or at any time or at all over a period of the last several years, or at any time or at all; affiant states that the said defendant Leonard Woodruff has no "positive" or other knowledge of the facts he alleges as aforesaid; denies that the said Leonard Woodruff has any basis whatever therefor in truth or in fact, and alleges that the said Leonard Woodruff made the said statement knowing, or having reason to know, that the same is wholly false and untrue and that the said Leonard Woodruff made the said false affidavit for the purpose of embarrassing and humiliating this affiant before this Honorable Court. Affiant states that this litigation has no connection whatsoever in any way, shape or form, nor has it ever been referred to in any way, shape or form in connection with his presence in the United States at any time, or at all.

That he did not know or learn of the existence of the file or record in Action No. 276469, Superior Court, Leonard Woodruff vs. Golden State Gem Co., et al., until after the file had been obtained by the Clerk of the Superior Court from the said Robert Beveridge. That immediately upon learning of the said file and record he caused his attorney to obtain a photostatic certified copy thereof from the Superior Court Clerk. That the statements otherwise under oath of the said Beveridge as they pertain to this plaintiff and the said file are wholly false and untrue.

M. E. Heiser.

Subscribed and sworn to before me this 17th day of May, 1939. Paul Joseph, Notary Public in and for said County and State. (Notarial Seal)

The defendant Woodruff served "Applicant's Points and Authorities" with the moving papers on this motion. In due course plaintiff served and filed his memorandum of points and authorities in answer thereto. We will not repeat the matter set forth in such memorandum which is already before the Court.

On April 19 plaintiff was served with defendant Woodruff's Additional Points and Authorities upon Motion to Set Aside Default. We agree with the first two points made in such brief; namely, "(A) Summons must be served as required by law to give court jurisdiction of the person."; and "(b) A judgment entered where summons not served, is not valid and court is without jurisdiction of the party." With these two points there can be no controversy whatever. It is apparent however that counsel for defendant Woodruff is either wholly unfamiliar with the new rules of Federal procedure because they cite California cases, and of the rules as existed prior to the present rules of Federal procedure, or the briefing of the issue in the manner they present has merely confused them. We disagree with the third point made in defendant Woodruff's Points and Authorities; namely, that there was no legal service of summons in this action, nor are their authorities in point.

The case of Doherty vs. Kalmbach, 87 Fed. (2d) 539, etc., is not in point as can be seen from the reading of even the excerpts therefrom cited in defendant's Points and Authorities at length. Defendant Woodruff's counsel devotes several pages to this citation and makes it the high point of their brief. However, that case decided a matter pertaining only to an "elisor" to the effect that while under the court rule of the District of Columbia where the case arose, the District Court might have appointed a private person to serve the summons in place of the Marshal of the District of Columbia. The Court, instead of simply appointing a private person, appointed an "elisor" and that an "elisor" was an officer unknown to the laws of the District of Columbia and the order of appointment therefore conferred no power upon the appointee to serve summons. The court, in reversing the order denying the motion to quash service of summons, expressly points out that under the court rule

a private person might have been appointed to serve the summons, but that the District Court had no power to create the office of "elisor" and implement such office with authority to serve summons in the absence of any law or rule. On page 2, 3, and 4 of defendant's Additional Points and Authorities the quotations from the Doherty case are taken from certain parts of the opinion illustrating the nature of the office of "elisor" and demonstrating that an "elisor" may be appointed only in case the marshal and the coroner are disqualified. This of course presents an entirely different situation which could not by any stretch of the imagination become pertinent to this issue before the Court.

The Marshal's office at all times had authority to serve the summons in our case, and such authority is conferred upon the United States Marshal by law and rule of court. Service was not made in our case by an "elisor" who the court in the Doherty case says may be appointed only in case the marshal and the coroner are disqualified. But the service in our case was by the constantly authorized process serving authority of this court and of the law; namely, the United States Marshal. Therefore the case of Doherty vs. Kalmbach, while no doubt good law for the very narrow point involved, is wholly meaningless for the issue for which it is used in defendant Woodruff's Additional Points and Authorities.

The remaining argument in the Additional Points and Authorities of defendant Woodruff is that the law of the State of California as developed under the statutory rule now embodied in the California Code of Civil Procedure, Section 473a, should be applied by this Court on this motion for the reason that the law of the state in which the District Court sits, to-wit, California, is the rule of decision in such Federal court.

Nothing could be farther from the true state of the law on this motion. Before going into the authorities cited by defendant, which we do later, we would respectfully call the Court's atention to the fact that the provisions of Section 473a of the California Code of Civil Procedure, which defendant Woodruff would have this Court consider to be

the law of this case, are not incorporated in Federal Rule of Civil Procedure No. 60 (b). The saving in rule 60 (b) of the remedy under the Judicial Code, Section 57, does not aid defendant for the reason that Section 57 applies only to actions involving liens on, or claims to, real or personal property within the jurisdiction where the defendant sought to be served is a non-resident or cannot be found. Our case at bar is an action for money damages for conversion of personal property and does not involve a lien upon or claim to such property. Thus, it may be seen definitely that Judicial Code, Section 57, does not apply, *nor does* defendant Woodruff purport to follow the procedure laid down by that section.

We submit that on the moving papers before this Court the defendant Woodruff makes no showing whatever in support of his motion save an attempt to show a meritorious defense and his alleged lack of the knowledge of the service of the summons until February 27, 1939. From the Affidavit of Leonard Woodruff, sworn to before Robert L. Beveridge, dated March 27, 1939, and filed herein to support this motion, the said defendant, Leonard Woodruff, swears on page 1, lines 14½ to 16½:

"That At No Time Did He Have Knowledge That a Summons Was Alleged to Have Been Served On Him Until February 27, 1939, On Which Date He Learned That His Default Had Been Entered."

Said defendant Leonard Woodruff further states in the same affidavit on page 1, lines 23 to 27:

"That affiant was absent from the said residence from on or about January 7, 1939 until February 26 or 27, 1939, when he returned to attend his younger son's birthday dinner on February 28, 1939; that defendant did not have knowledge that a summons or copy of a complaint in this action had been left at No. 2446 Inverness Avenue until February 27, 1939"

These two excerpts are from the Affidavit of the defendant, Leonard Woodruff, and sworn to before Attorney Robert L. Beveridge as Notary and dated March 27, 1939, and

served with defendant Woodruff's motion herein to support the same.

Now, under the rules of this Court defendant Woodruff has twenty days within which to appear after service. Had the defendant Woodruff been served with summons on February 27, which is the date upon which he swears he had knowledge of the service of the said summons, he would have been required to answer twenty days thereafter, or not later than March 20, 1939. No attempt was made by the said defendant Woodruff to answer or to obtain any order extending time to answer, or to vacate the default, until the present motion was filed on April 9, 1939, nor was the default judgment until after hearing by the Court on March 20, 1939. So defendant Woodruff waited for a longer time to move to vacate the default than he was allowed within which to appear, even assuming that February 27, when he admits in his Affidavit he learned of the service, had been the date of service rather than January 31, the date when the service was actually made by the United States Marshal. But, in reality, we submit this defendant Woodruff did do something in the meantime. On March 9, 1939, defendant Walter Calvin Smith, who is charged in the complaint herein as one of the conspirators with defendant Woodruff, moved through Attorney Robert L. Beveridge for a dismissal of this action. The verification of the affidavits of Robert L. Beveridge, and of Walter Calvin Smith taken before the said Robert L. Beveridge, bear the same date, March 9, 1939. This was within ten days after Defendant Woodruff admits by his affidavit that he learned of the service upon him.

This same Attorney Beveridge disavows any connection as an attorney with defendant Woodruff. Nevertheless, this same Mr. Beveridge is the Notary Public on three of the affidavits of the defendant Leonard Woodruff filed in support of this present motion of defendant Leonard Woodruff, and upon the affidavit of Howard L. Woodruff, the son, not to mention that the same Mr. Beveridge as Notary Public took the actual verification of defendant Woodruff on his proposed answer submitted with this motion. We submit that Mr. Beveridge has been too closely connected with defendant Woodruff from before the time of the commencement of this

action, and that some tactical advantage for defendant Woodruff was sought by the motion made on behalf of defendant Smith by the said Mr. Beveridge. Smith had never taken any part in this action before the said motion was presented on his behalf by Mr. Beveridge. The closeness in time of the nascent interest of Smith in this action to the service of process upon Mr. Woodruff is hardly a coincidence with Attorney Beveridge in the background.

The other attorney for defendant Woodruff herein is Mr. Edward Fitzpatrick, and who, we will show later in this memorandum, has represented defendant Woodruff in dozens of cases in many litigated matters for many years throughout the Municipal, Superior, Appellate and District Courts of this community wherein we submit defendant Woodruff is a chief litigant. Mr. Edward Fitzpatrick has filed affidavits in support of this motion in which he shows a very personal interest in this action, and it appears that this same Edward Fitzpatrick was the Notary on the service of the original action in the Superior Court of this County wherein the said defendant Woodruff committed tortious act of conversion of this plaintiff's property, which is the subject of the present suit. We repeat from the original affidavit of M. E. Heiser on file herein in opposition to this motion of defendant Woodruff, the following excerpts, none of which have been denied by the said defendant Woodruff or by the said Edward Fitzpatrick; though their statements as to many other matters have been quite prolific, they noticeably disregard this:

"That after said cause of action arose said Fitzpatrick has conspired with defendants herein to defeat the rights of affiant as plaintiff herein . . . . that Fitzpatrick has no personal knowledge whatsoever of any of the acts or things alleged in the complaint and has misstated the facts in this action . . . . and any and all 'knowledge' thereof is *heresay* and has been gotten by said Fitzpatrick from defendants and the attorneys, or from third parties, and none of said information has come from contact with affiant or his attorney of record herein . . . . that the said Beveridge and Fitzpatrick have been familiar with this case ever since it commenced; that affiant has been informed by a clerk in the office of the clerk of the United States District Court

that the said Edward Fitzpatrick has frequently and regularly come into the office of the clerk of this court since the commencement of this action, and has requested the file in this action before this Honorable Court, and has obtained the same, and has from time to time examined the same, and has familiarized himself therewith, and that said Fitzpatrick has stated that the plaintiff would never be able to serve the said Woodruff because he was smart enough to evade the same and then wear the plaintiff out . . . . that the said Edward Fitzpatrick has represented the said defendant Woodruff in this action at all times since the commencement thereof, and has on various and numerous occasions conferred with him about the same."

Now, peculiarly enough, and defendant Woodruff would have this Court believe it was a coincidence, the notice of motion in this action by defendant Woodruff, which is now before the Court, is dated March 27, the same day upon which the Minute Order of this Honorable Court shows that an order was made denying the motion to dismiss of defendant Smith.

We submit that the defendants did not seasonably move to set aside the default entered herein on March 20, but, instead, attempted through the defendant Smith on March 9 to gain an advantage, and only when Mr. Smith's motion was unsuccessful and the Court ruled thereon on March 27 did the defendant Woodruff make the present motion to open the default. The affidavits submitted on this motion by defendant Woodruff show nothing whatever to explain the negligent delay of defendant Woodruff, or the willful conduct in attempting to move through the said defendant Smith, whichever view the Court may take of the situation.

The plaintiff herein has been most diligent in attempting to cause the summons and complaint herein to be served upon the defendant Leonard Woodruff. The record shows that the United States Marshal received the complaint and summons herein for service upon defendant Leonard Woodruff the day after the filing of the complaint, and the same remained with the United States Marshal for service with every effort being exerted by plaintiff through his counsel, and by the United States Marshal's office to make service from that very day to the date service was actually made

herein, to-wit, January 31, 1939. This is only one phase of plaintiff's activities which is summarized in the statements, certificates and affidavits of Chief Civil Deputy United States Marshal Clarence G. Mertz and Deputy United States Marshal Frank L. Besser for the return on the summons herein by affidavit of Deputy United States Marshal Edward Faupel. For the convenience of the Court a photostatic copy of the verified statement and certificate of Chief Civil Deputy United States Marshal Clarence G. Mertz and Deputy United States Marshal Frank L. Besser are annexed hereto, together with a copy of the affidavit of Deputy United States Marshal Frank L. Besser, and the return of service of Deputy United States Marshal Edward Faupel. Page 15. We respectfully urge this Honorable Court to carefully consider these certificates and affidavits. The allegations and statements contained therein are by important officers of this very court, wholly disinterested in this action or the parties thereto. These copies are appended to this page.

Against such completely disinterested showing the defendant Woodruff produces a series of scandalous, impertinent and controversial affidavits in an unquestionable attempt to undermine the reputation of plaintiff and to cast uncalled-for doubt and suspicion upon plaintiff's integrity, and even the integrity of officers of this court, of the United States Marshal, and counsel representing the plaintiff. We submit that many false issues have been raised in the papers upon which the defendant Woodruff relies on this motion.

The issue is, in reality, extremely simple and is to be decided in the sound discretion of this Court. The question is solely and only whether or not showing of surprise, inadvertence, inexcusable neglect has been made by defendant Woodruff. We respectfully submit that in the case made under the law no such excuse has been presented and no foundation laid therefor by defendant Woodruff, and the entire proceeding to set aside the default and the default judgment regularly and properly entered herein is an impertinent attempt by one who might be termed a professional litigant and who has evaded the very process of this court and jeered at its dignity, and its officers to gain an advantage in no way contemplated by Rule 60 (b), which provides a means for giving relief to meritorious litigants who find

themselves in distress through no fault of their own and who can lay themselves upon the mercy of the court by a showing that entitles them to such equity.

It is interesting to note that in none of the voluminous papers filed by defendant Woodruff is anything whatever said to indicate what became of the summons and complaint, admittedly served upon Mr. Aycox by Mr. Bellows on January 28, 1939, or what became of similar papers admittedly served upon Howard L. Woodruff, the defendant Woodruff's son, a person of suitable age and discretion who admittedly then resided at the dwellinghouse and usual place of abode of defendant Woodruff, on January 31, 1939. Though defendant Woodruff alleges in his affidavit, as we have noted, that he first learned of the service of the summons on February 27, 1939, his only explanation of this delay, is that from early in January until late in February, namely, February 26 or 27, he was away from his usual residence, staying at the residence of William DeVoto in the City of Los Angeles, and with Mr. DeVoto was busying himself during this time considering the opening of a new business. No reason is even suggested by defendant Woodruff why, during all of this time, he did not call his residence by 'phone, or see or talk to his wife, or contact anyone at his residence and usual place of abode. Defendant Woodruff merely makes the claim in his affidavit that he did not learn of the service until February 27 (page 1, lines 14 to 16 of his Affidavit dated March 27, 1939, and page 1, lines 23 to 27), but no place does he explain or offer any excuse for this delay of a month from February 27, 1939, when he first learned of the service, until March 27, 1939, when he made his first move or appearance in his own name in this action, though we submit that he did take a chance that this Court would dismiss this case through the motion which was denied on March 27, filed by Attorney Beveridge in behalf of defendant Smith.

Under the California Code of Civil Procedure, Section 473a, where no personal service is made upon the defendant, such unserved defendant, within one year, may move to set aside a default entered against him upon showing a meritorious defense or other excuses in Section 473a, under which latter Section naturally both a meritorious defense and a

statutory excuse must be shown. Save for the remedy under Judicial Code, Section 57, which, as we have shown, is inapplicable here, Rule 60 (b) is substantially the same as California Code of Civil Procedure 473: namely, a statutory excuse must be shown. Section 473a of the California Code is not included in the new rules of civil procedure. It is simple to distinguish between the cases decided under the statute now embodied in Section 473a of the California Code of Civil Procedure which defendant would ask the Court to consider, but which are not in point, and the cases decided in the rule now embodied under Section 473 of that Code which has been incorporated in the Federal Rule of Civil Procedure No. 60 (b) and is the law and rule under which this Court will decide this question.

Prior to the promulgation of the new Rules of Federal Procedure, whatever belonged to practice and forms and modes of proceedings was controlled by the Conformity Act (Amy v. Watertown, 130 U. S. 304). In the absence of Federal statute or court rule the State law was followed with regard to the mode and manner of service. (Swarts v. Christie Grain & Stock Company, 166 Fed. 338.)

The purpose of the adoption of the new Rules of Federal Procedure was to abolish the practices that had grown up under the Conformity Act and it is obvious that such effect has been obtained, at least in a law action. (Rule 1; Rule 81; 1 Moore Fed. Prac. Under The New Rules, 35 and 36.)

Rule 4c provides that service may be made by the Marshal or one specially appointed to make the service. It has always been the law that it is one of the Marshal's duties to serve all process issued out of the District Court placed in his hands for service and appearing to be legal. (Lovering v. U. S., 117 Fed. 565.) The appointment of Daniels to serve the summons and complaint in this case was permissive only, and was supplementary authority not depriving the Marshal of his underlying authority. Therefore, we submit that a proper person, to-wit, the Deputy United States Marshal Edward Faupel, served the summons. It would be bordering upon the ridiculous to adopt defendant's strained theory otherwise.

We submit that counsel for defendant Woodruff is grossly

mistaken in their suggestion that the service had in the case at bar was something different from personal service. The Federal Rules of Civil Procedure, Rule 4d, provides as follows:

"Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

"(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

Now, the service of the summons and complaint herein was made on January 31, 1939, by Edward Faupel, Deputy United States Marshal, and the return of the United States Marshal is attached to the summons filed February 9, 1939, in this court. We quote it in full as follows:

"United States Marshal's Office
Southern District of California

I hereby certify and return, that I received the within Summons on the 31st day of January, 1939 and personally served the same on the 31st day of January, 1939, on Leonard Woodruff, by handing to and leaving a true and correct copy thereof, together with copy of the complaint, with Mr. Woodruff, Jr., an adult person, who is a member or resident in the family of Leonard Woodruff, said defendant named therein, at the dwelling house and usual place of abode of said Leonard Woodruff, located at 2446 Inverness Street, City of Los Angeles, County of Los Angeles, in said District

ROBERT E. CLARK, U. S. Marshal.
By EDWARD L. FAUPEL, Deputy

Los Angeles, California, February 3, 1939."

Defendant Woodruff admits that 2446 Inverness Street is his dwelling house and usual place of abode and that the

complaint and summons were served on his son, Howard L. Woodruff, on January 31, 1939, by the said Edward Faupel, Deputy United States Marshal, and it is not denied that said Howard L. Woodruff is of suitable age and discretion residing at said dwelling house. This spells out a complete service on January 31, 1939, by the United States Marshal in this action, and we submit that under the Federal Rules of Civil Procedure, Section 4d, which deals with service of summons, this is personal service of summons as stated in the Federal Rule. The manner of service was proper and conferred jurisdiction over the person of the defendant. Rule 4d provides the manner in which personal service of summons shall be made. About thirty of our states have long since provided for service of summons by leaving a copy of the summons with the defendant personally or at his residence or usual place of abode with some member of the household of suitable age and discretion. This, no doubt, is the basis for Rule 4d of the New Rules of Federal Procedure. These statutes and the decisions under them are set forth in the 1938 Supplement to Edmund's on Federal Practice in the Annotations to Rule 4:

"Service of process by leaving a copy at the usual place of residence of the defendant within the district is personal service." (Knowles v. Gaslight & Coke Co. (U. S. 1873) 19 Wall. 58; Bickerdike v. Allen, 157 Ill. 95; Hamill v. Talbott, 72 Mo. App. 22; Hass v. Leverton, 128 Iowa 79.)

When the statute provides for service of summons by leaving a copy at the residence with a specified person, the fact that the defendant is not at the usual place of his residence, or where he generally lodges at the time he is served does not invalidate the service even though such defendant does not find that the suit has been filed until some time later and after a judgment by default has been obtained by the plaintiff (Venable v. Long Realty Co., 46 GA. App. 803; Galvin v. Dailey, 109 Iowa 332; In re Estate of McCormick, 260 Ill. App. 36.).

Now, defendant Leonard Woodruff, as we have shown in his affidavit, admits that he learned of the service herein of the complaint and summons on February 27, 1939, page 1, lines 14 to 16, and lines 23 to 27, of his Affidavit, by filing

a notice of motion on March 27, a month later, setting a hearing for April 10 on his motion, we submit is not timely made.

Where a substituted service is allowed by statute or rule a motion to open a default judgment, even though seasonably made, will be denied in the absence of a showing that the person served paid attention to the summons notwithstanding that a meritorious defense is shown in the moving papers (Giles v. Grady and Neary Ink Co., 284 Ill. App. 651.).

"A party who has knowledge of the judgment against him is required to exercise reasonable diligence in seeking to have it set aside, and his unexcused delay in the application, amounting to laches, will justify the court in refusing the relief asked. (Smith v. Jones, 174 Cal. 513; Glougie v. Glougie, 174 Cal. 126; Edwards v. Hellings, 103 Cal. 204.)" 34 Corpus Juris 216.

The case of Orschelm v. Scott, 79 Mo. App. 534, is referred to at length in the Additional Points and Authorities of Defendant. We have found two cases to show the manner in which the Missouri courts actually handle a situation such as confronts us. In Colter v. Luke (1907) 129 Mo. App. 702, on a motion to open a default, it was shown that the defendant was served by a copy of the summons being left at his residence and, while the defendant actually received the summons in time to make his answer, he did not assert his defense in any pleading until he set it up in an affidavit of merits on his motion to vacate the default. The Court said at page 707:

"Plaintiff who has been diligent has some rights which must be respected. He went to the trouble and expense of preparing for trial and appearing at the appointed time and place with his witness and obtained his judgment as the result of the orderly pursuit of the course of procedure prescribed by law. To set aside the judgment would be to punish him for the inexcusable neglect of his adversary.

"A defendant against whom judgment goes by default should not be made an object of solicitude upon the part of the court on the mere showing that he has a meritorious

defense. He further must show that he has not been neglectful of his own interests and that his failure to appear was due to a cause which would have misled any reasonably prudent and diligent person in his situation."

In the last case referred to the defendant actually received the summons in time to plead before the default was entered. In Mattocks v. Van Asmus, 180 Mo. App. 404 (1914) service was made upon the defendant by leaving copies at the usual place of abode with a person over 15 years of age, as provided by the Statute. Defendant first learned of the action after his default and the default judgment against him was entered. The Statute provides that any defendant "who has not been summoned" might have such judgment set aside on a showing of "good cause."

"It is fundamental, of course, that the court hearing a motion to vacate a default has a wide discretion and an appellate court will not interfere with the exercise of such discretion in the absence of clear abuse." (Brooks v. Nelson (1928) 95 Cal. App. 144; Weck v. Sucher (1929) 96 Cal. App. 422.)

The California courts have applied California Code of Civil Procedure, Section 473, with liberality, but in addition to a showing of a meritorious defense, one of the statutory excuses must appear. A mere showing of a good defense on the merits will not serve as a basis for setting aside the default. To set a default aside under Section 473 without one of the statutory grounds appearing, is an abuse of discretion.

Bailey v. Taafe, 29 Cal. 423.
Dunn v. Standard Accident Co., 114 Cal. App. 208.

"It is incumbent upon the defendant to assert his defense by a pleading within the statutory time for appearance: if he does not do so and his default is taken he must show some grounds mentioned in Section 473 as an excuse in addition to a defense."

Guire v. Drew, 83 Cal. 225.
Grey v. Milligan, 101 Cal. App. 328.
Sharp v. Paulson, 111 Cal. App. 515.

"The defendant must be diligent in presenting a motion to open the default. Laches will bar relief even though the defense on the merits plus a statutory excuse appears.

Smith v. Pelton Waterwheel Co., 151 Cal. 394.
Massimo v. Taranto, 108 Cal. App. 693.
Turner v. Frost, 51 Cal. App. 196.

Finally, if in its discretion a court determines that relief should be granted and that the statutory excuse appears therefor, then upon granting relief as is said in 34 Corpus Juris, 380:

"It is usually proper for the court to impose as a condition of opening a judgment, a requirement that defendant shall pay the accrued costs in the action (many cases cited), and also in a proper case and where justice requires it the disbursements of the opposite party (many cases cited) for reasonable personal expenses incurred in connection with suit, a proper fee for his attorneys (many cases cited) and the costs of the motion itself (many cases cited)."

Imposing as a condition for relief that plaintiff's costs be paid is proper.

Heermann v. Sawyer, 48 Cal. 562.
Watson v. San Francisco, etc. Co. 41 Cal. 17.

In Sheffler v. Hutchings, 124 Cal. App. 760, the condition that a surety bond be filed to guarantee the judgment, costs and an attorney's fee if plaintiff prevailed, was held to be proper.

Defendant Woodruff suggests in his brief that this court in designating some individual as a proper person to serve a copy of the complaint and summons, was, in effect, to deprive the United States Marshal of such right. We submit that this is wholly without merit. The authority of the United States Marshal and his deputies existed by law and rule of this court before any person was specifically appointed by the court for that purpose and necessarily continued throughout from the commencement of the action to the end. The rule is his authority therefor in plain language. The appointment by the court of some individual as a proper person was at most supplemental authority that would not deprive the United States Marshal or his deputies of the

underlying authority. In defendant Woodruff's counsel's own authority in the case of Doherty v. Kalmbach, 87 Fed. (2d) 539, which he quotes at length, it may be seen that the United States Marshal at all times would have a right to make service of this process because, as the court said, the lower court in said case had no authority to create the office of "elisor" and implement such office with power to serve process, so, this Honorable Court, we respectfully submit, would have no authority to deprive the Marshal of this District, and his deputies, of his statutory authority to serve process. It has been the law that the Marshal's duty to serve all process placed in his hands for service and appearing to be regular, and so long as he holds office this duty cannot be denied him. (Lovering v. U. S., 17 Fed. 565.)

To take a cognate situation, California Civil Code provides:

"The summons may be served by the Sheriff of the county where the defendant is found, or by any other person over the age of 18 not a party to the action."

Could it be argued that when "any other person" attempts to make the service then the Sheriff of the county is without power to make similar attempt, and if the Sheriff succeeds where "any other person" does not, is the Sheriff's success nullified by the supplemental authority in "any other person"? An affirmative answer would be ridiculous and we submit that Rule 4 (c) of F. R. C. P. removes any doubt as far as the service of process of this court by the United States Marshal is concerned. The cases cited and quoted from Point "C" in defendant Woodruff's brief do not demonstrate in any manner that the service in this case made by Deputy United States Marshal Faupel was a service by an unauthorized person, the United States Marshal having at all times authority to make service, and such authority could not be taken away by designation by the court of some individual as a proper person to serve.

It is interesting to note that in none of the papers filed on behalf of defendant Woodruff is anything said to indicate what became of the summons and complaint admittedly served on January 26, 1939, or what became of similar papers admittedly served upon Mr. Woodruff's son on Jan-

uary 31, 1939. Apparently Mr. Woodruff and his counsel do not care to be positive on this matter or to mention it. But Mr. Woodruff is positive in his affidavit dated March 27, 1939, on page 1, line 14, filed in support of this motion, "that at no time did he have knowledge that a summons was alleged to have been served on him until February 27, 1939, on which date he learned his default had been entered in the above entitled action on February 23, 1939." But defendant Woodruff admittedly did nothing until this present motion was filed in his behalf on March 27, 1939, though in Mr. Calvin Smith's behalf Attorney Beveridge did file on March 9, 1939, a motion to dismiss in behalf of defendant Smith, and Attorney Beveridge did file an affidavit herein to support Mr. Woodruff, in which he accuses attorney's for the plaintiff, and plaintiff of bad faith, and plaintiff of using this case to remain in this country, wholly falsely, and he further proffers under oath, statements which he "admits" were made to him by plaintiff herein at a time when he admittedly was representing plaintiff as his counsel in this very action. By his own admission in his affidavit such statements were privileged at best and such privilege was not released, and yet Attorney Beveridge is the notary public on three of Mr. Woodruff's affidavits filed herein and on the affidavit of Mr. Woodruff's son, not to mention that he also took the verification in the supporting answer submitted with this motion. The affidavit of L. E. Lampton, Clerk of the Superior Court of Los Angeles County for twenty years, attached hereto, states on page 3 thereof, line 11: That said statement of said Robert L. Beveridge in his affidavit insofar as it refers to L. E. Lampton, affiant herein, is false and untrue." The affidavit of plaintiff attached hereto shows exactly how he is in the country and proves conclusively the falsity of Attorney Beveridge's allegation. There is nothing equivocal about all this. Surely a defendant against whom judgment goes by default should not be made an object of solicitude on the part of the court on the mere showing that he believes he has a meritorious defense. He must further show that he has not been neglectful of his own interest and that his failure to appear was due to a cause which would have misled any reasonably prudent and diligent person in his situation, as is shown by the affidavit of Mr. Joseph, attached hereto, setting up the record in the

County courts at Los Angeles. Mr. Leonard Woodruff, defendant herein, was, and is, we submit, the chief professional litigant of the community and stands so charged before this court.

We submit that from the facts before this Court, defendant Woodruff virtually says to this Honorable Court:

"Yes, I did everything I could to evade service and to keep the United States Marshal and any other person from reaching me with service. I kept my attorney, Edward Fitzpatrick, constantly watching this record in the United States Clerk's office. Yes, everyone knows that I am an expert at evading service. If you want proof look in the records of the cases in the Superior Court. Why, I even dodged the United States Revenue officers for years so that they could not make me file an income tax return. I admit that the United States Marshal served this summons at my residence and usual place of abode in a manner according to law: He delivered it to my son who was of suitable age and discretion who lives there with me, and who said that he would burn it and not tell me about it, and I am not going to tell you what happened to the papers, but, ah! I was away; I was not at home; I was at a friend's house in Los Angeles where I remained for a month after the service and did not even communicate with my house or my son or my wife during that time, and more, though I admit the complaint was served on January 31, I did not learn about it until February 27, but I did nothing, not me.

"It is true that nine days later defendant Smith, through Attorney Beveridge, moved to dismiss, but, no, no, that didn't have anything to do with me. It is true that I knew that on February 23 default was entered against me but I still did nothing. I knew that my answer was due twenty days after the complaint was served. I knew that the answer was due February 20. I knew that on March 20 the default judgment was taken but I still did nothing. I knew on March 27 this Court denied the motion of Smith and on that day, March 27, I moved to set aside this default judgment, but not until then. I accused everybody in this case, including the plaintiff and the lawyers for the plaintiff, and all the persons who tried to make service, and including the United

States Marshal and his four deputies, and those who have made affidavits herein, of being perjurers and of exercising bad faith over me—me, the topmost professional litigant of the community with over ninety cases to my name—and I ask this Court's mercy and insist that this Court set aside the default judgment."

The law throughout the United States, and particularly in California State and Federal courts, is well defined on the issue now before the Court; namely, that defendant Woodruff is not entitled to equitable relief unless he first shows that he has clean hands. By this we mean that this court must believe that he did not attempt to evade the service of summons issued by this court, as is charged by plaintiff. If the Court believes that he is not guilty of this charge, then defendant Woodruff must show mistake, inadvertence, or excusable neglect. We submit that defendant Woodruff has shown no such statutory grounds whatever here, but has merely attempted to raise a controversy over various wholly collateral matters which are not before this Court upon this motion, to the end possibly, that he might feel he could confuse this Court into believing that some doubt exists which might be decided favorable to him. This is the only conclusion that we can reach from the attitude expressed in the various affidavits he has filed.

Now, if all these conditions are complied with and defendant Woodruff were before this Court with all of these issues decided favorably to him by this Court, then it becomes a matter solely in the discretion of this *Honorable* Court to decide whether or not equities also are favorable to this defendant Woodruff to entitle him to the equitable relief he seeks. At law he is entitled to no relief. He has been served according to law and the rule of this court. He has failed to answer within the time prescribed by law. It must be plain to this Court that the said defendant Woodruff has *contemptiously* dealt with the process of this court, in this very proceeding, and as a result whereof he must now seek the mercy of this Court for such *contemptious* acts. We submit he is entitled to no mercy, but if perchance this Honorable Court feels that the said defendant Woodruff is entitled to the mercy of this Court and that this Court's discretion is going to be exercised favorable to him, then surely

it is not to be at the cost and expense of this plaintiff, who has acted throughout in the utmost good faith and who has shown by the records of this court and the cost bill upon which a judgment has been rendered for the amount of $1,595.00, and to the sum in actual costs expended by plaintiff herein in his attempts to obtain service upon the said defendant Woodruff, while he was successfully evading same, should be "mercifully" added, and not less than $5,000.00 in attorney's fees, to include the costs on this motion.

It may be plainly seen from the uncontrovertible facts before this Court that defendant Leonard Woodruff is probably the topmost professional litigant in this community, throughout all of the courts. Five of his Appellate Court proceedings are noted in this memo, wherein the said Woodruff has appealed without merit having been found therein. Fifty-seven cases are noted in the Superior Court of Los Angeles County, and thirty-three in the Municipal Court, wherein he is a litigant, a grand total of ninety cases. Excerpts from a number of his records in the Superior Court have been noted in this memo, some of which were pending during the time that the action herein has been before this Court, wherein the said defendant Leonard Woodruff has been accused of secreting himself for the purpose of evading service of summons, and in each of such proceedings the Superior Court has found that he so secreted himself and was avoiding the service of summons. He can be said to be a "professional" evader of summons. He has falsely accused this plaintiff before this Court without a scintilla of evidence to support the claim of violation of the Immigration laws. His attorney, Robert Beveridge, has done likewise. L. E. Lampton, County Clerk of Los Angeles Superior Court for twenty years, flatly accused the said Beveridge of false swearing in his affidavit in this very court.

We respectfully pray in the interests of justice that the motion of defendant Woodruff be denied.

Respectfully submitted,

LEONARD J. MEYBERG,
Attorney for Plaintiff.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al, Defendants. No. 7256-C.

Affidavit of Paul M. Joseph.

State of California, County of Los Angeles, ss.

Paul M. Joseph, being first duly sworn, deposes and says:

That he is an attorney admitted to practice in the above entitled court; that he has examined the records in the office of L. E. Lampton, Clerk of the Superior Court in and for the County of Los Angeles, State of California; that the "Plaintiffs Index Book" in said office, dating back to 1921, shows that defendant Leonard Woodruff in the above entitled action, was plaintiff in the following case numbers on file in the office of the said Clerk of the Superior Court in and for the County of Los Angeles, State of California, to wit:

Woodruff v. Tilt	No. 279030
Woodruff v. Kurfuss	276902
Woodruff v. Lewis	276524
Woodruff v. Golden	276469
Woodruff v. Kurfuss	275625
Woodruff v. Stegman	258070
Woodruff v. Schuelke	254602
Woodruff v. Schuelke	254601
Woodruff v. Weinblatt	253783
Woodruff v. Bishop	249707
Woodruff v. Provident Loan	249706
Woodruff v. Lewis	241428
Woodruff v. Becker	211002
Woodruff v. Mary Lewis	203698
Woodruff v. Lewis	201478
Woodruff v. Coates	B-94475
Woodruff v. First National Bank of Pasadena	317203
Woodruff v. American Clay Co.	324632
Woodruff v. Ernest Walker	334841
Woodruff v. Milton Golden	341004
Woodruff v. Maryland Casualty	357098

Woodruff v. Gavin Craig	358112
Woodruff v. Weinblatt	360282
Woodruff v. Gavin Craig	403078
Woodruff v. Los Angeles County	413593
Woodruff v. Joe Weinblatt	432553

That in the "Defendants Index Book" in the Clerk's office in the Superior Court in and for the County of Los Angeles, State of California, the said defendant Leonard Woodruff herein was defendant in the following entitled and numbered cases:

Victor Emden v. Woodruff	No. 127853
M. Stack v. Woodruff	139983
W. E. Simmons v. Woodruff	159721
Curtis Studios v. Woodruff	195043
City of Los Angeles v. Woodruff	202550
Los Angeles Bond & Securities Co. v. Woodruff	226901
Chas. Vajda v. Woodruff	244646
M. N. Minehardt v. Woodruff	246022
Curtis Studios v. Woodruff	246619
Arthur Stegman v. Woodruff	256705
Stegman v. Woodruff	256840
Alice Kurfus v. Woodruff	267684
Harry A. Smith v. Woodruff	270273
Madeline Wills v. Woodruff	277870
Barker Bros. v. Woodruff	283672
R. E. Hopkins & Co. v. Woodruff	289251
Wills v. Woodruff	306862
J. T. Carroll v. Woodruff	309708
Lewis v. Woodruff	320284
J. A. Coleman v. Woodruff	339655
Adolph Ramish, Inc. v. Woodruff	344344
Chas. Ehrlick v. Woodruff	356383
W. C. Bohne v. Woodruff	CA-2051
Harry Tumansky v. Woodruff	359763
F. E. Keeler v. Woodruff	364777
Flanagan v. Woodruff	366377
R. E. Allen, Trustee v. Woodruff	372911
James Darnell v. Woodruff	377657
Trompeter & Co. v. Woodruff	383014
Trompeter & Co. v. Woodruff	399480
George Fowler v. Woodruff	402825

That the said defendant herein, Leonard Woodruff, was appellant in the following proceedings in the Appellate Court of the State of California, to-wit: Civil Case No. 7560, 110 Cal. App. p. 375, in which the Appellate Court in the opinion by Presiding Justice Works referred to Mr. Woodruff's appeal as follows: "We are satisfied that the appeal is without merit."

That the said Leonard Woodruff, defendant herein, was the appellant in Civil Case No. 6818 in the Appellate Court of California. The judgment of the lower court against defendant Woodruff was affirmed and the opinion by Presiding Judge Conray closes as follows: "We think, therefore, that the suggestion that the judgment is against law by reason of the asserted defect in the defendant's answer, is without merit." This was a unanimous decision of the Court and a petition by Woodruff for a rehearing of this cause was denied. (118 Cal. App. 318, 323.)

That the said Leonard Woodruff, defendant herein, was the appellant in the Supreme Court of the State of California in the case of Adolph Ramish, Inc., Respondent, v. Leonard J. Woodruff, Appellant, 2 Cal. Reports, 2d Series 190, wherein the judgment of the Superior Court against said Woodruff was affirmed. The opinion is by Justice Curtis.

That the said defendant herein, Leonard Woodruff, is the petitioner for Writ of Certiorari to review an order of the Superior Court of Los Angeles County in an action wherein Leonard Woodruff was defendant, in Civil Action No. 10360 in the Appellate Court of California, 6 Cal. App. (2d) p. 430, which Writ, without appearance by the respondent, was denied to the said Leonard Woodruff.

That the said Leonard Woodruff, defendant herein, was the appellant in Civil Case No. 9820 before the Appellate Court of the State of California, 14 Cal. App. (2d) p. 279, wherein the said Leonard Woodruff appealed from a decision of the Superior Court of Los Angeles County, which said judgment against the said Leonard Woodruff was affirmed by unanimous opinion of the said Court, and the Court says: "The trial court made adequate findings on all the issues; the evidence supports these findings and we find no error

in the record. The judgment is affirmed and the appeal from the order denying motion for new trial is dismissed, no appeal being authorized by law from such an order." The said defendant Woodruff thereon filed a petition to have the said cause heard in the Supreme Court which was denied.

In the same Reports, to-wit, 14 Cal. App. Reports, 2d Series, at p. 628, there is another case wherein defendant herein, Leonard Woodruff, was the defendant in the Superior Court and was the appellant in the Second Appellate District Court in Case No. 10563. This is a unanimous opinion of the Court; we quote from the opinion at p. 629: "Despite the formidable presentation of this appeal by means of a voluminous transcript and a book of exhibits exceeding five hundred printed pages, we find, upon analysis, a comparatively simple case." Further in the said opinion appears the following at p. 630: "Notwithstanding that he (Leonard Woodruff) engaged in business on a large scale during 1925 and in subsequent years, holding a great many oil leases in Oklahoma, owning ranches and homes in several different states, having accounts in a goodly number of banks, buying and selling stocks and bonds, and as a side line, carrying on a business dealing in antiques, having during at least a part of the time the assistance of a secretary-bookkeeper, and having had prior direct contact with the internal revenue department, this defendant (Leonard Woodruff) failed to file an income tax return for the years 1925, 1926, 1927, 1928, 1929 and 1930. The department in 1931 endeavored, by every reasonable means, to get him to make a report on this matter, forwarding its communications by registered mail and having a representative interview him, all to no avail. At last, the final notice, advising him of impending distraint proceedings, bringing no response, the defendant claiming to be ill then and on other occasions, the internal revenue collector for the Southern California District in early December attached his property, including an active account with a stockbroker, running into many thousands of dollars."

That the said opinion further refers to a cross-complaint, filed by defendant Leonard Woodruff in said action upon which the trial court found against him on all material issues, but wherein the said defendant, Leonard Woodruff,

as cross-complainant, charged the plaintiff with negligence, "also charging him in counterclaim with various faults, deficiencies, delinquencies, and even conversion of personal property." The opinion was concurred in by the Court unanimously and the petition by Leonard Woodruff for rehearing of the cause was denied.

In each of the foregoing appeals, except for the last one, the name of Edward Fitzpatrick appears as of counsel for the said Leonard Woodruff.

That affiant has examined the record and file of the last mentioned case in the Office of the Clerk of the Los Angeles Superior Court, entitled "James L. Darnell v. Leonard J. Woodruff," No. 377657. That the complaint was filed August 29, 1934. That judgment was rendered in said action against the said defendant, Leonard Woodruff. That in the said action the said Leonard Woodruff verifies a statement that one R. F. McCrory had been employed by him and with Howard Woodruff and others he had taken them to Washington, D. C. in February of 1934 to assist him. That in said action the plaintiff Darnell verifies his answer to a cross-complaint wherein he states that the said defendant herein, Leonard Woodruff, advised him that the "said R. F. McCrory was untrustworthy, was a joint conspirator with other parties to financially ruin him, and that he had better not see the said R. F. McCrory about said matter." That in the said pleading of the said Leonard Woodruff in said action he alleged under oath that he had taken the said McCrory and Howard Woodruff to Washington, D. C. in 1934, at his expense, for thirty days. In the findings of the Court, however, in said action at page 29 thereof, the Court finds that they did not stay in Washington for thirty days, as alleged by said Leonard Woodruff, but merely for one week. That in the said action the Honorable Marshall F. McComb issued his order for publication of summons dated and filed September 18, 1934, which states as follows:

"On reading and filing the affidavits of Enid Finch, James M. Huddy, Frances B. Cobb, and A. B. Pratt, and it satisfactorily appearing therefrom to me that the defendant Leonard J. Woodruff cannot after due diligence be found within this state, and it also appearing from the verified

complaint and affidavit of James L. Darnell that a good cause of action exists in this action. . . . . and that personal service of the same cannot be made upon defendant Leonard J. Woodruff for the reason hereinbefore contained, and by said affidavit made to appear."

That the said order recites that "it satisfactorily appears that the residence of the said defendant is at 2446 Inverness Avenue, Los Angeles, California." That the Court ordered that summons be published at least two weeks and that a copy of the summons and complaint be mailed to the defendant Leonard Woodruff at that address. That in the records of said case there is a five-page affidavit of Frances B. Cobb, attorney for Darnell therein, which sets forth his efforts to get in touch with said Leonard Woodruff and several other persons purported to represent Woodruff, all unsuccessful. To said affidavit are attached several letters of Cobb to representatives of Woodruff, and also the affidavits for publication of summons in the case of Harry Tumansky vs. Leonard J. Woodruff, Los Angeles Superior Court No. 359763.

That in said action there appears the affidavit of one Enid Finch dated September 17, 1935, stating in substance that he went to the residence of defendant Leonard Woodruff on September 7, 1934, at 2446 Inverness Avenue, Los Angeles; that the door was answered by a Chinese servant who said Woodruff was not at home and that Woodruff had not been there for a long time, and that he had not been there for over a month; that on September 10 he again called at said home and the same servant answered the door and stated that the said Woodruff was not at home, but to leave a telephone number and that she would get in touch with said Woodruff and give his message; that he left his telephone number but never heard from said Woodruff; that the same thing was repeated on September 11 and again Woodruff did not reply; that on September 14, with one Huddy, a Special Deputy Sheriff, he called at Woodruff's antique store at 4534 Hollywood Boulevard, and inquired of one Edith Jackson in charge of the store for said Woodruff; that Mrs. Jackson told him she had not seen Woodruff for over a month; that he then showed the summons and complaint to Mrs. Jackson, saying that he wanted to serve same upon

her employer Woodruff: that the said Mrs. Jackson took said summons and complaint, looked at same, and said she would tell Woodruff of its contents. That the said Finch's affidavit further states on page 3 thereof, as follows:

"Affiant then called at 6317 Hollywood Boulevard, being a parcel of real property owned by the defendant, and inquired of the tenant who operates a jewelry store upon said property, for Mr. Woodruff, and had the following conversation: 'Who is the owner of this property?' The tenant answered: 'Mr. Woodruff, but you will have to see Thelma Weiser to whom I pay my rent and I suggest that you go next door and see Mrs. Flower first.' That affiant called next door and asked for Mrs. Flower and the following conversation occurred: Affiant said: 'I desire to see the owner of this property.' Mrs. Flower replied: 'What do you wish to see him about? If it is in regard to any of his property, I take care of all of his affairs.' Affiant replied: 'Do you take care of all of Mr. Woodruff's affairs?' She replied: 'Well, not all of them but most of them.' Affiant then said: 'I have a complaint to serve in the case of Darnell vs. Woodruff, and I want to know where I can serve Mr. Woodruff.' Mrs. Flower replied that on August 23 she saw Mr. Woodruff at the residence of Anna Lane which is above the antique store at 4534 Hollywood Boulevard, and talked with Mr. and Mrs. Woodruff about his affairs and that Mr. Woodruff stated that a United States Marshal was attempting to serve him with some subpoena. That he was not going to be served with the same. Mrs. Flower said: 'I tried to get him to accept service of the subpoena but he said he would not.' Mrs. Flower further stated that she was positive that Mr. Woodruff's attorney would not accept service of the Darnell complaint and summons, but that she would try to get him to accept service so they could fight the case to the limit. She stated that she was not sure that she could deliver the message to Mr. Woodruff but that she could to Mrs. Woodruff."

That there is in the said file an affidavit of the said Huddy to the effect that he is a Special Deputy Sheriff and accompanied Enid Finch, who makes the aforesaid affidavit, to Woodruff's store on September 14, 1934 and that the conversation set forth therein is true.

That in said file is a further affidavit of one Pratt to the effect that he is a Deputy Sheriff and his duties consist of serving complaints and summons in civil matters, and that on August 29, 1934, he called at Mr. Woodruff's home at 2446 Inverness Avenue at 8 A. M. and was told by the maid that Woodruff was out and she did not know when he would be in.

That affiant inspected the file in the case of Harry Tumansky, et ux, vs. Leonard Woodruff, Gavin Craig and Mary Wallace, Los Angeles Superior Court No. 359763. That said complaint was filed July 11, 1933. That said suit was on notes of Leonard Woodruff in favor of Gavin Craig. That judgment went for the plaintiff and the findings of the Court found the affirmative defenses set up by Leonard Woodruff were untrue. That the answer of Leonard Woodruff in said action sets up an agreement between the said Gavin Craig and the said Woodruff, and that the notes were delivered to the said Craig for a particular purpose, with an agreement that the notes would be returned to the said Woodruff after that purpose was accomplished, but nowhere in said pleading was there any statement as to what the said particular purpose was. That after said judgment went against the defendant Woodruff in said action he appealed the said case, as aforesaid. That the Appellate Court affirmed judgment against Woodruff as aforesaid. That Edward Fitzpatrick was one of the counsel for said defendant Leonard Woodruff in said action. That in said action there appears an order for publication signed September 27, 1933 by Hartley Shaw, Judge, and filed same day, which reads in part as follows:

"Upon reading and filing the affidavit of Milton Mack, Austin Sherman, and it satisfactorily appearing therefore to me that defendant Leonard J. Woodruff conceals himself to avoid the service of summons . . . and that personal service of same cannot be made upon said defendant Leonard J. Woodruff for the reason hereinbefore contained and by said affidavit made to appear, order is made for publication of summons for one month . . . . and it further in like manner satisfactorily appearing to me that the residence of said defendant Leonard J. Woodruff was last known to be 2446 Inverness Avenue, Los Angeles, California."

That it is ordered therein that a copy of the summons and complaint be mailed to defendant Leonard Woodruff at said address, 2446 Inverness Avenue, Los Angeles, California.

That in the record of the said action there appears an affidavit of one W. E. Malot, who swears that he is a process server employed by one Milton Mack; that he searched the telephone directory, which did not give the home address of Woodruff but gave his business address at 4532 Hollywood Boulevard. That he had a conversation with Mrs. Jackson in which she stated that said Woodruff was not in and that she refused to give him his home address. That he ascertained that the telephone number at his home address was a private one according to advice from the telephone company. That he advised Mrs. Jackson that he wanted to arrange for a service of summons and that the said Mrs. Jackson stated she would inform said Leonard Woodruff to arrange for appointment for service of summons, and that upon telephoning ten days later he was informed by Mrs. Jackson that she had not seen Woodruff but had informed his attorney. That the affidavit of the said Mack states that he went to the home and business address of Woodruff on numerous occasions at different times of the day and night and was never able to contact said Woodruff. That he talked to Mrs. Jackson at Woodruff's store, who stated that she was in complete charge of the store and that Mr. Woodruff never comes around and that she does not know where he could be reached; that on numerous occasions he talked to the maid at 2446 Inverness Street, who declined to give her name and said that Woodruff lives at that address, but that he is seldom home and that she has no knowledge as to where he goes or stays; that every time he went to the said home address the curtains were drawn and the house had an abandoned atmosphere. That on September 10, 1933 he talked to a young woman at Woodruff's home who said she was his daughter, but that she saw very little of him; that he consumed a whole month in an honest effort to locate and serve Mr. Woodruff, "but Woodruff concealed himself in order to avoid service of summons."

There appears in the file of the said action the affidavit of one Austin Sherman, who alleges under oath that prior to the commencement of the said action the said Woodruff

had sued Gavin Craig. That he told Woodruff's attorney that the present action would be filed and that since the filing thereof he had asked Woodruff's attorney if he still represented him; that he said he did. That he requested his attorney to enter an appearance for Woodruff for the reason that he could not serve summons and complaint on the said Woodruff and that said attorney for said Woodruff stated that he was sure he would be able to do so. That later he requested Woodruff's attorney to sign a stipulation that at a future date he would enter an appearance on behalf of said Woodruff, but that he refused to do so, although he knew that the present action was pending. That the said attorney further stated under oath that in addition to the summons and complaint given to Milton Mack, that he gave a copy of the summons and complaint to one Merlin Donaldson and that he knows of his own knowledge that he went to the place of residence, as well as the place of business of Mr. Woodruff on at least ten different occasions and was unable to serve the summons and complaint on said Woodruff. That in the said files of the said case there are several affidavits of Edward Fitzpatrick going into the merits of the said case.

That affiant has examined the files in the case of Adolph Ramish, Inc. vs. Leonard J. Woodruff, No. 344344, filed July 29, 1932, wherein judgment went for plaintiff and against the said defendant Leonard Woodruff. That in said action there appears an order for publication of summons signed and filed September 14, 1932 by the Honorable Harry R. Archbald, as follows:

"Upon reading and filing the affidavit of H. H. Harris, one of the plaintiff's attorneys, and it satisfactorily appearing therefrom to me that the defendant Leonard J. Woodruff conceals himself to avoid service of summons, and it also appearing from the affidavit of Hugo H. Harris and James Markey that a good cause of action exists in this action . . . . . and it further in like manner satisfactorily appearing to me that the residence of said defendant is at 2446 Inverness Street, Los Angeles, California, and that said defendant receives mail at such address daily,"

it is ordered that a copy of the summons and complaint be served by mail.

That in said action there appears an affidavit of James Markey that he is a Deputy Sheriff whose duty it is to serve summons and complaints; that he called at 2446 Inverness Street, the residence of said Woodruff, on August 15, 1932, with a copy of the summons and complaint and told the maid his name and his official position and asked for Mr. Woodruff, and that the said maid asked him to wait outside until she inquired whether Mr. Woodruff could see him, and in a few minutes thereafter she returned to the door and told affiant that the said Woodruff was too ill to be seen and that any matters pertaining to business could be transacted with parties in charge of Mr. Woodruff's store at 4526 Hollywood Boulevard, or with his attorney. That three times later he called at said residence address between August 15 and August 23, 1932, but received the same information. That the maid informed him that Mr. Woodruff stated he should take the matter up with his attorney who would accept service of summons.

In said action there also appears the affidavit of Hugo H. Harris, attorney for the plaintiff, to the following effect. That on August 5, 1932, he telephoned Woodruff's residence and was told that he could not come to the telephone. That he requested to speak to Woodruff's wife and thereupon a woman's voice answered who stated she was Mrs. Woodruff, and then he spoke to Mrs. Woodruff about the case and that Mrs. Woodruff said that Mr. Cobb represented Mr. Woodruff and that said Harris should contact him. That thereupon he telephoned said attorney and said to him that Woodruff was apparently avoiding service and requested him to ascertain if Woodruff would give him authority to make appearance. That said attorney stated that he was going to see Mr. Woodruff the same afternoon at his home, 2446 Inverness Street, Los Angeles, and would make an immediate answer, and thereupon the next morning the said affiant had a telephone conversation with the said attorney but that said Woodruff refused to authorize him to accept said service, and that said Woodruff felt that if service could be delayed the matter might somehow be adjusted and that the said Woodruff hoped to delay the matter sufficiently long to work out a settlement with certain other parties interested in the matter and would avoid service for that purpose.

That the said Superior Court records indicate that the said Woodruff was also defendant in the following Municipal Court cases: #38508, People vs. Woodruff; #66205, Gore Bros. vs. Woodruff, and others.

That in the case of Darnell vs. Woodruff the said Francis B. Cobb, who was the attorney for the plaintiff in said action, but who previously had been an attorney representing the said Leonard Woodruff and who had represented him in the Tumansky case aforementioned, states under oath in an affidavit dated September 18, 1934, as follows: "That the defendant Leonard Woodruff has concealed himself from date of the filing of this action and is now concealing himself to avoid service of summons."

That defendant (Leonard Woodruff) was sued in Municipal Court, Cobb vs. Woodruff, No. 317915. That it was impossible to effect personal service, but that after plaintiff procured an order for publication he answered.

That in the case of Tumansky vs. Leonard Woodruff, No. 359763, Superior Court, it was necessary for plaintiff Tumansky to publish summons on the ground that defendant (Leonard Woodruff) concealed himself to avoid service of summons.

That in the case of George Fowler vs. Leonard Woodruff, No. 402825, Superior Court of Los Angeles County, wherein the same Edward Fitzpatrick represented the said Leonard Woodruff, defendant therein, there appears an order of Judge Bowron for publication on the grounds of concealment to avoid service. That in said action there is an affidavit of J. J. Ashby and F. C. Rhoades. That the latter states that he received the summons and complaint in the action on November 27, 1936. That "subsequent to November 28, 1936 affiant inquired at the Sheriff's office, Los Angeles, for information regarding defendant (Leonard Woodruff) and was informed by Mr. Barton (a Chief Deputy) and other Deputies in said Sheriff's office that defendant (Leonard Woodruff) resides at 2446 Inverness Avenue, but that it would be impossible for affiant to serve said defendant (Leonard Woodruff) for the reason that he was extremely expert at evading service—that Sheriff's office (Los Angeles County) had made numerous attempts to

serve said defendant (Leonard Woodruff) but that they were unable to do so and would not accept any papers for service upon said defendant. That affiant is advised that defendant (Leonard Woodruff) has had concealed doors installed at his place of business with one entrance on Sunset and three entrances on Hollywood Boulevard so contrived that he can leave and enter without being observed by persons seeking to serve him, for specific purpose of evading service of process. That affiant avers defendant (Leonard Woodruff) is concealing himself to avoid service."

That since this affidavit was prepared to this point affiant has examined the records of the Clerk's office of the Los Angeles Municipal Court, and according to the Index File of record therein he finds that the said Leonard Woodruff is plaintiff or defendant in the following numbered Municipal Court cases: 12738, 21291, 29030, 41616, 66205, 69062, 101845, 103364, 104148, 111607, 113890, 128081, 146499, 157105, 212958, 216428, 218945, 223568, 224015, 226618, 244807, 288130, 297207, 313599, 317915, 489049, 440295, 431921, 325175, 325174, 313882, 209695 and 168583.

Further affiant saith not.

PAUL M. JOSEPH.

Subscribed and sworn to before me this 17th day of May, 1939. A. W. Brunton, Notary Public in and for said County and State. (Notarial Seal).

Heiser Exhibit J.

[Minute Order.]

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 8th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

Motion of defendant Leonard Woodruff for order of this Court to vacate and set aside the default and the default judg-

ment entered herein against the said defendant, and to permit the said defendant to file his answer herein, having come on regularly for hearing on the 10th day of April 1939 at 10 o'clock A.M. of said day, the Honorable Judge Geo. Cosgrave presiding, and Ames Peterson, Esq., appearing as counsel for the said defendant Leonard Woodruff and Leonard J. Meyberg, Esq., appearing as counsel for the plaintiff herein, and the Court being fully advised in the premises, and the said Ames Peterson, Esq., counsel for said defendant Leonard Woodruff, having applied to the Court for permission to file additional points and authorities and the Court having allowed the said defendant Leonard Woodruff time within which to file the same and having allowed time to the plaintiff within which to answer the same, and the said parties having filed their additional points and authorities and additional affidavits, and the said parties having appeared before the Court on the 25th day of May 1939 at the hour of 2 o'clock P.M., the defendant Leonard Woodruff by his counsel Ames Peterson, Esq., and the plaintiff by his counsel Leonard J. Meyberg, Esq., and the said parties having, through their said respective counsels, stipulated that all affidavits filed be a part of the record, and the Court being fully advised in the premises, and the matter having been submitted, and no adverse interest appearing,

It Is Hereby Ordered that the motion of defendant Leonard Woodruff for the order of this Court to vacate and set aside the default and the default judgment heretofore entered herein against the said defendant Leonard Woodruff, and for order of this Court permitting said defendant Leonard Woodruff to file his answer herein, be, and the same is, hereby denied.

The parties appearing before the Court on May 25, 1939, through their said respective counsel, to-wit: plaintiff by Leonard J. Meyberg, Esq., and defendant Leonard Woodruff by Ames Peterson, Esq., having further stipulated that on Monday, June 12, 1939, at 2 o'clock P.M., or as soon thereafter as counsel may be heard, the said Judge of the Court herein may hear evidence on behalf of the plaintiff and evidence on behalf of said defendant Leonard Wood-

ruff as to the value of the property of plaintiff herein, for which damages were allowed in the judgment herein against the said defendant, which said hearing shall be without a jury, a jury being expressly waived by the parties, and the issues at such hearing to be limited to ascertaining by the Judge of the said Court, from such evidence to be presented by the said parties under the rules of evidence of said Court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment herein against the said defendant, as in said complaint alleged, and that should the said Judge of said Court, after such hearing, find from such evidence that the value of the said property with interest thereon at 7% per annum from May 13, 1929, to date of entry of judgment, is less than the sum or amount of the judgment entered herein against the said defendant Leonard Woodruff, then and in such event the said judgment entered herein may be modified and reduced in amount by said Judge of said Court to such sum as the said Judge of this Court may find from such evidence, as aforesaid, together with costs as in said judgment stated, and any additional costs which the Court may find proper, and with interest thereon, and it was further stipulated between the said respective counsel representing plaintiff and said defendant Woodruff that plaintiff waives as against said defendant Woodruff his claim to exemplary and punitive damages of $150,000.00 set up in his first cause of action in his complaint, page 22, paragraph XV, lines 6 to 9, and his claim for damages of $100,000.00 for loss of rights and profits in his complaint on page 24, paragraph III, lines 21 to 24, and his claim for exemplary and punitive damages of $150,000.00 in his second cause of action in said complaint, page 24, paragraph IV, lines 26 to 30, and the claim for exemplary and punitive damages in the sum of $150,000.00 set up in the third cause of action, page 28, paragraph IV, lines 11 to 14, and that such exemplary or punitive damages shall not be considered by the Judge in ascertaining the value of the said property, and notice of such hearing having been expressly waived.

It is the intent and purpose of this Order that such competent evidence as either party desire to present be received

by the said Court at said hearing and considered by it in determining the actual value of the property which plaintiff alleges was converted by the defendants,

Now, Therefore, It Is So Ordered.

Heiser Exhibit K

[Clerk's Minutes]

At a stated term, to-wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented, the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939:

It is ordered that the cause be, and it hereby is, continued to June 19, 1939, at 2 o'clock P. M. for the said proceedings.

At a stated term, to-wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 19th day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming on for presentation of evidence as to

the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Ames Peterson, Esq., appearing for Leonard Woodruff.

Attorney Meyberg makes a statement, and Attorney Peterson makes a statement; whereupon,

Frank A. Marcher, at 2:20 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Peterson, is examined on voir dire by Attorney Meyberg; on re-direct examination by Attorney Peterson; on cross-examination by Attorney Meyberg; is examined by the Court; and testifies further on re-cross-examination by Attorney Meyberg. The following exhibits are marked for identification:

Plf's. Ex. 1 for Ident.—Purported sample of industrial rough sapphire material.

Plf's Ex. 2 for Ident.—Purported sample of Australian blue rough sapphire material.

At 3:22 o'clock P. M., after a ten minute recess, Court reconvenes with all present as before.

Ted William Zimmer, at 3:23 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Peterson; at 3:31 o'clock P. M. on cross-examination by Attorney Meyberg; is examined by the Court; testifies further on re-direct-examination by Attorney Peterson, and on re-cross-examination by Attorney Meyberg. The following exhibits are marked for identification:

Plf's Ex. 3 for Ident.—Purported sample of rough zircon material.

Plf's Ex. 4 for Ident.—Paper with one stone being Australian blue sapphire.

At 3:55 o'clock P. M. Court recesses in this case until June 22, 1939, at 10 o'clock A. M.

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 22nd day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant, Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against the defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Ames Peterson, Esq., appearing for Leonard Woodruff; H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings; at 10:45 o'clock A. M. Court reconvenes in this cause:

It is ordered that Robert L. Beveridge, Esq., who is present, be associated as counsel for Defendant Woodruff on motion of Attorney Peterson.

Walter Calvin Smith, at 10:43 o'clock A. M., is sworn and testifies for the defendants on direct examination by Attorney Beveridge, and on examination on voir dire by Attorney Meyberg.

At 11:25 o'clock A. M. Court recesses until 2:30 o'clock P. M. At 2:35 o'clock P. M. Court reconvenes, and all being present as before,

Walter Calvin Smith, heretofore sworn, resumes the stand and is examined by Attorney Meyberg on voir dire.

and testifies on re-direct examination by Attorney Beveridge.

Walter F. Godber, at 2:53 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Beveridge, is examined by the Court, and at 3:15 o'clock P. M. is cross-examined by Attorney Meyberg.

At 3:17 o'clock P. M. Court recesses for ten minutes. At 3:35 o'clock P. M. Court reconvenes, and all being present as before.

Walter F. Godber resumes the stand and testifies on cross-examination by Attorney Meyberg, is examined by the Court, testifies on re-cross-examination by Attorney Meyberg, and on re-direct examination by Attorney Beveridge.

The following exhibit is marked for identification:

Plf's Ex. 5 for Ident.—Burnishing tool.

At 4:10 o'clock P. M. Court recesses in the trial of this case until 10 o'clock A. M., June 23, 1939.

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 23rd day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for Leonard Woodruff; H. A. Dewing, being

present as Court Reporter and reporting the testimony and the proceedings; at 10:06 o'clock A. M. proceedings herein continue:

Irving Oreck, at 10:07 o'clock A. M., is sworn and testifies for Defendant Woodruff on direct examination by Attorney Peterson; is examined by Attorney Beveridge, at 10:15 o'clock A. M. is cross-examined by Attorney Meyberg; testifies on re-direct examination by Attorney Beveridge; and is examined by the Court.

Defendant Woodruff's Exhibit A for Ident.—Being a cigar box half full of stones, is marked for identification, and later, is admitted into evidence:

Howard L. Woodruff, son of Leonard Woodruff, at 10:40 o'clock A. M. is sworn and testifies for Defendant Leonard Woodruff on direct examination by Attorney Beveridge.

At 10:42 o'clock A. M. Court recesses for ten minutes. At 11:03 o'clock A. M. Court reconvenes, and all being present as before,

Howard L. Woodruff resumes the stand and is further examined by Attorney Beveridge; at 11:13 o'clock A. M. is cross-examined by Attorney Meyberg; testifies on re-direct examination by Attorney Peterson; and on re-cross-examination by Attorney Meyberg. The following exhibits are offered and admitted into evidence:

Def't Woodruff's Ex. B—Warehouse Receipt 5 9 32 signed by Howard L. Woodruff,

Def't Woodruff Ex. C—One (1) sheet reading "Bag Rock weight 168", etc.,

Def't Woodruff's Ex. D—Notice of Unsecured Property Taxes 1939-1940, 35 bags sample ore, 415 S. San Pedro, etc.

Mrs. Willie May Woodruff, at 11:38 o'clock A. M. is sworn and testifies for Defendant Woodruff on direct examination by Attorney Beveridge; at 11:40 o'clock A. M. is cross-examined by Attorney Meyberg, and testifies on re-direct examination by Attorney Beveridge.

The defendant rests at 11:52 o'clock A. M.

At 11:53 o'clock A. M. Court recesses in this case until June 27, 1939, at 10 o'clock A. M.

Heiser Exhibit L.

[Clerk's Minutes.]

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 27th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that they represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for Leonard Woodruff; and H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings:

Ted M. Sturdevant, at 10:04 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, is examined by the Court, and cross-examined by Attorney Peterson.

Gertrude S. McMullen, at 10:15 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, on cross-examination by Attorneys Peterson and Beveridge, on re-direct examination by Attorney Meyberg, on cross-examination by Attorney Peterson, and is examined by the Court. The following exhibit is marked for identification:

Plf's Ex. 6 for Ident.—Piece of black industrial sapphire, and piece of burnishing tool, and the said exhibit is later offered and admitted into evidence.

Clare Woolwine, Esq., at 10:42 o'clock A.M. is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg.

At 11:56 o'clock A.M. Court recesses for ten minutes. At 11:10 o'clock A.M. Court reconvenes, and all being present as before,

Maurice Emanuel Heiser, plaintiff, at 11:10 o'clock A.M. is sworn and testifies in his own behalf on direct examination by Attorney Meyberg, and at 11:32 o'clock A.M. is cross-examined by Attorney Peterson.

At 11:44 o'clock A.M. Court recesses until 2 o'clock P.M. today.

At 2 o'clock P.M. Court reconvenes, and all being present as before,

M. E. Heiser, heretofore sworn, resumes the stand and testifies on further cross-examination by Attorney Peterson, is examined by the Court, testifies on re-direct examination by Attorney Meyberg, on re-cross-examination by Attorney Peterson, and is examined by the Court. The following exhibits are either offered and admitted into evidence, or marked for identification, as indicated:

Deft's Ex. E—Bill of Lading 8/9/1928, "Received of Los Angeles Steamship Company",

Def's Ex. F For Ident.—Receipt for freight delivered.

Plf's Ex. 7—Portion of "Judgment Docket" in matter of Golden State Gem Co., a Corp., Bankrupt, as read into record by Mr. Meyberg,

Plf's Ex. 8—Information circular—Department of Commerce—Bureau of Mines, 11 sheets,

Plf's Ex. 2-B For Ident.—Small package of Blue Sapphires,

At 3:08 o'clock P.M. Court recesses in this case until 10 o'clock A.M., June 28, 1939.

At a stated term, to wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 28th day of June in the year of our Lord one thousand nine hundred and thirty nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant, Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for defendant Leonard Woodruff; and H. A. Dewing be present as Court Reporter and reporting the testimony and the proceedings:

Witness M. E. Heiser, heretofore sworn, resumes the stand and testifies on further examination by Attorney Meyberg, and on cross-examination by Attorney Peterson, and the following exhibits are marked for identification:

Plf's Ex. 2-C For Ident.—Sample of Australian blue sapphires in the rough.

Plf's Ex. 2-D For Ident.—Three separate Australian sapphire stones.

Plaintiff's Exhibits 2-A, 2-B, 2-C, and 2-D are now offered and admitted into evidence; and Plaintiff's Exhibits 3 and 4, for identification, are now offered and admitted into evidence as Plaintiff's Exhibits 3 and 4, respectively.

Anthony P. Caluori, at 10:21 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, at 10:25 o'clock A.M. is cross-examined by Attorney Peterson; testifies further on redirect examination by Attorney Meyberg, and is examined by the Court.

John Morse, at 10:32 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, and at 11:38 o'clock A.M. is cross-examined by Attorney Peterson.

At 10:40 o'clock A.M. Court recesses. At 10:55 o'clock A.M. Court reconvenes, and all being present as before,

Gertrude S. McMullin, heretofore sworn, resumes the stand and testifies on direct examination by Attorney Meyberg, is examined by the Court, and is cross-examined by Attorney Peterson. The following exhibit is offered and admitted into evidence:

Plf's Ex. 9—Envelope containing stones.

Jules Howard, at 11:30 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, at 11:33 o'clock A.M. is cross-examined by Attorney Peterson, testifies on re-direct examination by Attorney Meyberg, and is examined by the Court. The following exhibits are offered and admitted into evidence:

Plf's Exhibits 5 and 6 — Being the exhibits formerly marked for identification.

At 11:40 o'clock A.M. it is ordered that this cause be, and it hereby is, continued to 11 o'clock A.M., June 29, 1939, for further proceedings.

Heiser Exhibit M.

[Minute Order.]

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 29th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence, as to the value of the property of the plaintiff herein

for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against the defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge, and Ames Peterson, Esqs., appearing for the defendants; and no court reporter being present:

Attorney Peterson argues to the court re value of material; Attorney Beveridge makes a statement; and at 11:18 o'clock A. M. Attorney Meyberg argues to the Court; whereupon, it is ordered that the cause be submitted.

The Court makes a statement, and the value of the property in controversy is fixed at the amount fixed in the judgment, counsel to prepare order in the usual manner, with exception noted to the defendant.

Heiser Exhibit N.

Notice of Motion to Vacate Judgment to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene.

To the Above Named Plaintiff, M. E. Heiser, and his attorney of record, Leonard J. Meyberg:

You, and each of you, will please take notice that on Monday, September 18th, 1939, at the hour of ten (10) o'clock A. M., or as soon thereafter as counsel may be heard, Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, will move the above entitled Court, Judge Campbell E. Beaumont, judge thereof, Federal Building, Main and Temple Streets, Los Angeles, California, to Vacate Judgment, to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the

Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene.

You are further notified that said motion will be made upon the affidavit of merit of Leonard J. Woodruff, the affidavit of P. M. Jackson, Trustee in bankruptcy for the estate of Leonard J. Woodruff, upon the verified answer of Leonard J. Woodruff now in the files of the above entitled proceeding; upon the proposed verified answer of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, the affidavit of Francis B. Cobb, attorney for said P. M. Jackson, the affidavit of merits of Leonard J. Woodruff filed in the above entitled case, and the Counter Affidavit of Leonard J. Woodruff Answering Plaintiff's Affidavit in Opposition to Leonard J. Woodruff's Motion as One of the Defendants to Said Default and Default Judgment, the affidavit of Howard Woodruff and upon the Points and Authorities on behalf of P. M. Jackson, trustee.

That said motion will be made upon the following grounds:

1. (a) Said process was not legally served in that this was an action at law commenced on July 11th, 1935, and under Rule 54 of this Court and Section 411 of the Civil Code of Procedure; that said process so attempted to be served was issued on April 21, 1937;

(b) Said process so attempted to be served by the United States *Marshall* when it was provided by the order of Court entered on January 26, 1939, that the same should be served by E. M. Daniels in the place and stead of said United States *Marshall*, which order was in effect at the time of the alleged service;

2. That the judgment was prematurely entered in that the complaint was based upon a joint liability and judgment was entered as against one defendant prior to the trial as to other defendants.

3. (a) The complaint does not state a cause of action;

(b) That the allowance of interest in said judgment is not supported by the complaint and is contrary to law;

(c) The complaint contains three separate and distinct counts and the judgment does not show upon which count the same is based, and said counts are inconsistent;

4. That said complaint is defective:

(a). The complaint shows on its face that it is barred by subdivision 4 of Section 338 of the Code of Civil Procedure and subdivision 3, Section 338 of the Code of Civil Procedure, Section 343 of the Code of Civil Procedure and Section 1624 of the Code of Civil Procedure.

(b) That the complaint shows the title to said merchandise passed to the Golden State Gem Company, a Nevada Corporation;

(c) That the complaint does not show title in M. E. Heiser as a judgment and execution sale alleged in the complaint have not been set aside or attacked;

(d) That the complaint was barred by laches which appears upon the face of the same.

Said motion will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment.

That said motion will be made upon the further ground that Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, Bankrupt, have a good and sufficient defense to plaintiff's alleged causes of action, and that they have been prevented from presenting said defense upon any trial of the merits by reason of fraud, accident, surprise and excusable neglect as is more particularly shown by the affidavits hereinabove mentioned and on file in the above entitled proceeding.

You are further notified said motion will be made upon

the files and records of the proceedings herein and upon the affidavits above set forth and upon the law and points and authorities submitted herewith.

Dated the 7th day of September, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt.

Received copy of the within Notice to Vacate, etc., this 9th day of September, 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Sep. 11, 1939 at 11:35 a. m. R. S. Zimmerman. Clerk. By H. K. Jacobs, Deputy Clerk.

Heiser Exhibit O.

Affidavit of Merits in Support of Motion to Vacate Judgment by Default, Etc.

State of Oklahoma, County of Carter, ss.

P. M. Jackson, being first duly sworn, deposes and says:

That on July 5, 1939, Leonard J. Woodruff was duly adjudged a bankrupt in the District Court of the Untied States for the Eastern District of Oklahoma, and all proceedings in said matter were referred to George F. Clark as referee.

That on the 20th day of July, 1939, your affiant was duly appointed and qualified as Trustee in Bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and that at all times since said date he has been and now is the acting Trustee in Bankruptcy for the estate of Leonard J. Woodruff.

That on August 23, 1939, George F. Clark, as Referee in Bankruptcy, entered an order authorizing and directing affiant to institute the necessary legal action to vacate and set aside a default judgment in the above entitled proceeding, and authorizing affiant to employ Francis B. Cobb, of

the firm of Cobb, Campbell & Kelley, to represent him in said proceedings.

That affiant has read a copy of the verified proposed answer of Leonard J. Woodruff on file in the above entitled proceeding.

That so far as known to affiant and as appears from the records in the above entitled proceeding and from verified statements of the bankrupt filed in the bankrupt's proceedings in the United States District Court in and for the Eastern District of Oklahoma, and to Francis B. Cobb, special counsel for affiant and who has examined the files and records of the proceedings mentioned, and who has advised affiant, affiant does verily believe, that as the legal representative of said Leonard J. Woodruff, he has a good and sufficient defense to the alleged causes of action set forth in plaintiff's complaint.

Affiant further avers that he has been advised by the above named attorney that affiant is a proper party and has the legal right to intervene, appeal and contest the allegations in said complaint.

Affiant further avers that the default judgment entered in the above entitled proceeding is in the sum of $277,036.71 plus cos s and that the other claims against the above entitled estate so far as known to affiant are in the sum of approximately $800,000.00; that the other creditors in the above entitled estate will suffer irreparable injury and a substantial loss of their claims if the judgment in favor of said M. E. Heiser is permitted to stand and if the same is without merit, in that, the assets of the estate, so far as known to your affiant, will not exceed the sum of approximately $400,000.00 and the known claims including that of the said M. E. Heiser approximating nearly $1,100,000.00, the said M. E. Heiser will receive approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors. Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors and your

affiant, as representative of said creditors, and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits.

Affiant is further advised by his attorneys that said default was procured under mistake, inadvertence and surprise, in that, Leonard J. Woodruff, nor any of the creditors, knew, prior to the entry of said judgment, that the alleged process had been served.

Affiant is further informed and advised by said attorneys that said action by M. E. Heiser was an action at law and that said complaint was filed and said process was issued prior to September 20, 1938, to-wit: on the 21st day of April, 1937. That under the conformity act then in effect, personal service was necessary to be made upon the defendant, Leonard J. Woodruff, and that the service upon the son of said Leonard J. Woodruff was not a legal service, and that plaintiff and his attorney, knowing said facts, have attempted, to practice and did practice fraud upon the above entitled court and upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment and thereafter procuring an abstract of said judgment and recording same in the County Recorder's office prior to the filing of the bankruptcy proceeding, and said judgment has become a lien upon the real property owned by Leonard J. Woodruff in Los Angeles County, which property is an asset of said estate, the title to which said property is now vested in affiant by operation of law; that the same amounts to a lien and encumbrance affecting the assets of the estate of Leonard J. Woodruff, a bankrupt, which it is the duty of affiant to administer and liquidate.

That affiant has read the Notice of Motion to Vacate Judgment to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene; that affiant believes and has been advised by his attorneys above named that the grounds set forth in said motion exist and that the same possesses merit, and that if granted, the claim of M. E. Heiser, as set forth in said complaint, and each count thereof, can be defeated

in whole, and that the property of this estate can then be released from the lien of said judgment; that the creditors of this estate will receive a larger percentage of their claims, and that affiant is entitled under the laws of this court, and of the State of California, to make this motion and to intervene and defend the alleged claim of M. E. Heiser.

P. M. JACKSON.

Subscribed and sworn to before me this 1st day of September, 1939. Monterey Leeper, Notary Public in and for said County and State. My Commission expires May 11, 1940. (Notarial Seal).

(Indorsed.)

Received copy of the within Affidavit of Merits, etc., this 9th day of Sept., 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Sep. 11, 1939. R. S. Zimmerman, Clerk. By H. K. Jacobs, Deputy Clerk.

Heiser Exhibit P.

Affidavit of M. E. Heiser.

State of California, County of Los Angeles, ss.

M. E. HEISER, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled action. That on or about the 29th day of June 1939 the above entitled Court, Honorable Geo. Cosgrave presiding, refused to grant defendant Leonard Woodruff a stay of execution upon his application therefor. That plaintiff's counsel stipulated with defendant Woodruff's counsel for a stay of execution until July 6, 1939, at the request of defendant Leonard Woodruff, upon the condition that there would be no assignment of whatsoever nature made by said defendant, and no change whatever in his status during said period. That contrary to said stipulation said defendant Leonard J. Woodruff did proceed to Ardmore, Oklahoma, and did on July 3, 1939, make his oath and petition in bankruptcy,

wherein he states, "that he has had his principal place of business for the greater portion of six months next immediately preceding of the filing of this petition at Ardmore, Oklahoma." That he lists as his creditors therein secured creditors consisting of three mortgage owners and his mother, Ida Bell Woodruff. That he lists as his unsecured creditors, his mother, Ida Bell Woodruff, in the amount of approximately $60,000, and his brother, Herman Woodruff, in the amount of $14,000, and his wife, Nellie May Woodruff, in the amount of $316,000, and one Davis in the amount of $10,650, and "judgment rendered against Leonard Woodruff March 20, 1939, Federal Court, Los Angeles County, California, No. 7256-C," and no other creditors. That he fails to list in his inventory of assets the Woodruff Antique Stores located at 4532 Hollywood Boulevard, Hollywood, California, which is valued at from $100,000 to $400,000, but states under Schedule B-4 that he has made "bill of sale dated July 3, 1939 of Woodruff Antique Stores located at 4532 Hollywood Boulevard, Hollywood, California, at a value of $30,000," which bill of sale he alleges to have been made to counsel for services rendered or to be rendered in his said bankruptcy. That said defendant Leonard Woodruff, upon examination in said proceedings in Oklahoma, did thereafter state under oath that the value of the said stores was from $100,000 to $400,000 for the personal property therein, and that the cost thereof in 1933 was in excess of $500,000, and that the building in which the said Woodruff Antique Stores was located had cost him over $200,000. That the same was free and clear. That he maintained no books pertaining to the said business.

That referring to the affidavits filed by the said Leonard Woodruff in the above entitled action on his motions heard before Judge Cosgrave, the said defendant Leonard Woodruff, upon examination in said proceedings in Oklahoma, testified on or about August 11, 1939, as follows:

"Q. Now Mr. Woodruff I want to ask you about these two affidavits filed out there in the Heiser case in California. Do you remember making those affidavits?

A. Yes.

Q. Who prepared those affidavits, your attorney?

A. No, a lady and an attorney for one of the other de-

fendants, Mr. Calvin Smith. The lawyer, Mr. Beveridge, I think his name was, he made the affidavit wherein the word "home" appears and they delayed it so long, my attorneys were supposed to put it in, they put it in in a hurry and I didn't read it.

Q. What do you mean by these statements, do you mean that that was just where you stayed at, at that time?

A. That particular affidavit, I don't think I read it at all, I should have but I didn't.

Q. At the time you made the affidavit in the case of Heiser v. Woodruff, in an action pending in the District Court of the United States for the Southern District of California, you say you didn't read the affidavits?

A. I didn't read all of them.

Q. Were they read to you?

A. No."

That said defendant Woodruff further testified that he knew said affidavits were being used for the purpose of setting aside the judgment and he knew it was an affidavit to set aside a default judgment. That the Referee at the conclusion of the examination found that "apparently the bankrupt only alleged his place of business had been in Ardmore for the necessary period before filing the petition," and that "if it should be decided that the domicile of the bankrupt was not in Oklahoma during the required period of time it would necessarily follow that his residence for the required period of time could not have been in Oklahoma as the bankrupt was actually in California for the longer portion of the six months preceding the bankruptcy than in any other jurisdiction." And, further, that "during the six months preceding bankruptcy his property in California was of greater value than in Oklahoma" and that "his property in California consisting principally of business property and large stock of antiques, etc. located therein." (five stores known as Woodruff Antique Stores.)

This affiant, plaintiff herein, denies that he and or his attorney have attempted to practice and or, did practice fraud upon the above entitled court and or upon the said Leonard J. Woodruff in procuring the entry of the said judgment and said default judgment, or as defendant Leonard Woodruff or the alleged trustee Jackson alleges, or

otherwise, or at all; denies that any fraud has been committed upon the above entitled Court by plaintiff or his attorney.

M. E. Heiser.

Subscribed and sworn to before me this 16th day of September 1939. Paul Joseph, Notary Public in and for said county and state. (Seal).

(Indorsed)

Received copy of the within Affidavit this 16 day of Sept. 1939.

Cobb, Campbell & Kelley (DH)
Attorney for Leonard Woodruff.

Filed Sept. 18, 1939—11 a.m. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

Heiser Exhibit Q.

Affidavit of Leonard J. Meyberg.

State of California, County of Los Angeles, ss.

Leonard J. Meyberg, being first duly sworn, deposes and says:

That he is attorney of record for plaintiff herein and has been since the commencement of this action. Denies that plaintiff and/or his attorney and/or this affiant have attempted to practice and/or did practice fraud upon the above entitled court and/or upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment herein, or otherwise, or at all. Denies that any fraud whatever has been practiced upon this court by affiant as attorney for plaintiff, or otherwise, or at all, or by plaintiff.

Leonard J. Meyberg.

Subscribed and sworn to before me this 16th day of Sep

tember, 1939. Paul Joseph, Notary Public in and for said county and state. (Seal)

(Indorsed)

Received copy of the within affidavit this 16 day of Sept. 1939. Cobb, Campbell & Kelley (D. H.) Attorney for Leonard Woodruff.

Filed Sept. 18, 1939, 11 A. M. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

Heiser Exhibit R.

[Clerk's Minutes.]

At a stated term, to-wit: The September term A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the 26th day of September, in the year of our Lord one Thousand Nine Hundred and Thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

No. 7256-C Law.

This cause coming before the Court at the hour of 11 o'clock A. M. for hearing on (1) motion of M. E. Heiser, plaintiff, for an order striking the notice of motion to vacate judgment, to set aside default, to vacate orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by P. M. Jackson, Trustee in Bankruptcy, for Leonard J. Woodruff, and to allow the trustee in bankruptcy for Leonard J. Woodruff, to intervene, filed on behalf of Leonard J. Woodruff and or P. M. Jackson, as trustee, pursuant to notice of motion, etc. filed September 21, 1939; and (2) motion of Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, to vacate judgment, to set aside default, to vacate order entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff to

permit the filing of an answer by P. M. Jackson, trustee in bankruptcy, for Leonard J. Woodruff and to allow the trustee in bankruptcy to intervene, pursuant to notice filed September 11, 1939; Leonard J. Meyberg and Paul M. Joseph, Esqs., appearing for the plaintiff; Francis B. Cobb, Esq., of Cobb, Campbell & Kelley, Esqs. appearing for Leonard Woodruff, defendant, and for P. M. Jackson, trustee in bankruptcy; and H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings:

At 11 o'clock A. M. it is ordered that the cause be, and it hereby is, continued to 2 o'clock P. M. today. At 2:05 o'clock P. M. court reconvenes herein, and all being present as before.

Attorney Cobb argues to the Court. At 2:57 o'clock P.M. Attorney Meyberg argues in reply; the Court makes a statement; and both of said motions are denied.

The Court says that Attorney Meyberg may prepare an order, if he desires, and if not, the minute order will stand as the final order.

Heiser Exhibit S.

Notice of Appeal.

To the Honorable Geo. Cosgrave, Judge of the United States District Court:

P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a bankrupt, and the defendant Leonard Woodruff feeling aggrieved by a decree rendered and entered in the above entitled proceeding in the form of a minute order of June 29, 1939, and a minute order of September 26, 1939, do hereby appeal to the United States Circuit of Appeals for the Ninth Circuit, pursuant to Rule 73, subdivisions (a) and (b) of the Federal Rules of Civil Procedure.

Your petitioners pray that the proper record on appeal, as provided in Rule 75 of the Federal Rules of Civil Pro-

cedure, be docketed, and that this appeal be heard and determined as provided by law.

Dated this 28th day of September, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for Estate of Leonard Woodruff, a Bankrupt.
EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY.
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff.

Copy mailed to Leonard J. Meyberg, Atty for Plf. 9/23/39. E. L. S.

(Endorsed): Filed Sept. 29, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

Heiser Exhibit T.

Appellants' Statement of the Points on Which They Intend to Rely on the Appeal.

To the above named Plaintiff and Appellee, and his Attorney of Record, Leonard J. Meyberg, Esq.

You, and each of you will please take notice that appellants, P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff, do hereby designate the following points on which they intend to rely on their appeal in the above entitled proceeding:

That the Court erred in failing to grant the motion of P. M. Jackson, as Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff to vacate and set aside the default of Leonard J. Woodruff, and the judgment and orders based thereon, for the following reasons:

I.

That summons was not properly served in that:

(a) It was served by the United States Marshal on defendant's son, when E. M. Daniels had been designated by order of January 25, 1939, to serve the same in the place of said United States Marshal.

(b) That the summons was issued on April 21, 1937, and under the Conformity Act then in effect personal service on Leonard Woodruff was required, and actual service was made upon his son.

(c) The form of summons served upon the son of the defendant did not comply with Rule 4 of the Federal Rules on Civil Procedure.

II.

That the Court erred in denying the motion of the Trustee in Bankruptcy to vacate the default and default judgment with the right to intervene and defend the action upon its merits.

III.

That the judgment was prematurely entered in that the complaint was based upon a joint liability on an alleged conspiracy, and judgment was entered as against one defendant prior to trial of the issues with respect to the other defendant who has answered.

IV.

That plaintiff's complaint does not state a cause of action against the defendant Leonard J. Woodruff.

V.

That the Court abused its discretion in not permitting P. M. Jackson, as Trustee in Bankruptcy, the right to defend plaintiff's action on the merits, where a meritorious defense was shown, and the defendant was not personally served with summons.

VI.

That the Court erred in not granting the motion of appellant P. M. Jackson, as Trustee in Bankruptcy, for the reason that the judgment is void as against the trustee in

bankruptcy under Section 67 (d) of the Bankruptcy Act as amended.

Dated this 28th day of September, 1939.

COBB, CAMPBELL & KELLY.
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a Bankrupt, Appellant.

EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY.
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff, Appellant.

(Indorsed) Filed Sept. 29, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

Heiser Exhibit U.

In the United States Circuit Court of Appeals for the Ninth Circuit Court.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al., Defendants. No. 9356.

Appellants' Statement of the Points on Which They Intend to Rely on the Appeal.

To the Honorable Curtis D. Wilbur, Presiding Judge, and the Associate Justices of the Circuit Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Section 6 of Rule 19 of the Rules and Practice of this court P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and Leonard J. Woodruff, do hereby file with this court the following concise statement of the points on which they intend to rely on this appeal.

I.

That the Court erred and abused its discretion in failing to grant the motion of P. M. Jackson, as trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and Leonard J. Woodruff, to vacate and set aside the default of Leonard J. Woodruff and the judgment and orders based thereon under Rule 60B of the Federal Rules of Civil Procedure and permit the filing of an answer on the merits.

II.

That the Court was without jurisdiction as to the defendant Woodruff to enter a default judgment in that summons was not properly served.

(a) It was served by the Marshal on defendant's son, when E. M. Daniels had been designated by order of January 25, 1939, to serve the same in the place of said Marshal.

(b) That the alias summons was issued on April 21, 1937, and under the Conformity Act then in effect personal service on Leonard Woodruff was required.

(c) The form of summons served upon the defendant did not comply with Rule 4 of the Federal Rules on Civil Procedure.

III.

That plaintiff's complaint does not state a cause of action against the defendant Leonard J. Woodruff.

IV.

That the Court erred in not granting the motion of appellant P. M. Jackson for the reason that the judgment is void as against said trustee under section 67 (d) of the Bankruptcy Act as amended.

V.

The Court erred in opening the case after judgment, for the limited purpose of ascertaining values of the property

involved, to the exclusion of all other defenses on the merits.

Dated this 3rd day of November, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a Bankrupt, Appellant.
EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY,
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff, Appellant.

(Endorsed) Appellant's Statement of the points on which they intend to rely on the appeal. Filed November 4, 1939. Paul P. O'Brien, Clerk.

A True Copy. Attest: November 8, 1940. Paul P. O'Brien, Clerk. By Frank H. Schmid, Deputy Clerk.

Heiser Exhibit V.

In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 9356. Apr. 30, 1940.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before Denham, Mathews and Stephens, Circuit Judges.

Mathews, Circuit Judge:

This appeal is from (1) an order which, on June 29, 1939, refused to modify a default judgment in an action for damages for conversion of property and (2) an order which, on September 26, 1939, denied a motion to vacate the judgment, set aside the entry of default and permit answers to be filed.

The action was brought by appellee, M. E. Heiser, against Leonard Woodruff and others in the District Court of the United States for the Southern District of California. Appellee is a British subject. Woodruff is a citizen of California and a resident of the Southern District thereof. One of Woodruff's co-defendants is a citizen of Nevada. The others are citizens of California. The amount in controversy exceeded, exclusive of interest and costs, the sum of $3,000. The District Court had jurisdiction in the action.

The action was commenced on July 11, 1935. Summons was issued on that day, but, being unable to find the defendants, the marshal returned that summons unserved. Another summons was isued on April 21, 1937. On January 25, 1939, E. M. Daniels was specially appointed by the court to serve the summons and complaint on Woodruff, but Daniels never made such service. The marshal, on January 31, 1939, did make such service by leaving copies of the summons and complaint at Woodruff's dwelling house and usual place of abode with a person of suitable age and discretion then residing therein.[2]

On February 23, 1939, it appearing by affidavit and otherwise that Woodruff had failed to plead or otherwise defend, the clerk entered his default.[3] Thereafter appellee applied to the court for a judgment. The court, on March 20, 1939, conducted a hearing to determine the amount of damages and, at the conclusion thereof, entered judgment against Woodruff for $164,000, with interest and costs.[4] From that judgment, no appeal was taken.

On March 29, 1939, Woodruff filed a motion to vacate the judgment, set aside the entry of default and permit him to answer. The motion was heard on April 10, 1939, and, by an order entered on June 8, 1939, was denied. From that order, no appeal was taken.

On May 25, 1939, appellee and Woodruff stipulated in open court that the court might hear evidence as to the value of the converted property, and that, if the value there

[2] Federal Rules of Civil Procedure, Rule 4(c).
[3] Id., Rule 4(c), (d) (1).
[4] Id., Rule 55(a).
[4] Id., Rule 55(b) (2).

of was found to be less than the amount ($164,000) awarded by the judgment, the judgment might be modified accordingly. On June 29, 1939, a hearing was had, pursuant to the stipulation. Both parties (appellee and Woodruff) appeared and participated in the hearing. The court found that the value of the property was the amount awarded by the judgment. Accordingly, by an order entered on June 29, 1939, the court refused to modify the judgment.

On July 5, 1939, Woodruff was adjudged a bankrupt. On July 20, 1939, P. M. Jackson was appointed and qualified as trustee in bankruptcy of Woodruff's estate. On September 26, 1939, pursuant to written notice theretofore served and filed, Jackson and Woodruff (hereafter called appellants) moved the court to vacate the judgment in the law action, set aside the entry of default and permit the filing of answers by appellants. The motion was heard and, by an order entered on September 26, 1939, was denied. From that order and the order of June 29, 1939, this appeal was taken on September 29, 1939.

The order of June 29, 1939, was not a final decision, within the meaning of § 128(a) of the Judicial Code, 28 U.S.C.A. § 225(a), and was not appealable. Republic Supply Co. v. Richfield Oil Co., 9 Cir., 74 F.2d 909, 910; Benson v. United States, 9 Cir. 93 F.2d 749, 751.

A claimed ground of appellents' motion of September 26, 1939, was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud. Thus, by their motion, appellants instituted what was, in effect, an independent action or proceeding. Hence, the order of September 26, 1939, was a final decision, within the meaning of § 128(a) of the Judicial Code, 28 U.S.C.A. § 225(a), and was appealable. Stevirnac Oil Co. v. Dittman, 245 U.S. 210, 214, 216; Rust v. United Waterworks Co., 8 Cir., 70 F. 129, 132.

The District Court properly refused to vacate the judgment as having been obtained without valid service of process. For, as previously shown, service was made on January 31, 1939, in accordance with Rule 4 of the Federal

Rules of Civil Procedure, then in effect, and was, we think, valid service. Furthermore, even if not validly served with process, Woodruff, by entering into the stipulation of May 25, 1939, and by participating in the hearing of June 29, 1939, waived such service and voluntarily submitted himself to the jurisdiction of the court.

The charge that the judgment was obtained by fraud was denied and not proved. That ground of appellants' motion appears to have been abandoned. Other claimed grounds of the motion were that the judgment was prematurely entered and was otherwise erroneous; that the complaint did not state a cause of action and was otherwise defective; and that the complaint showed on its face that the action was barred. These were matters which, if true, might have been urged as defenses or, if the judgment had been appealed from, as grounds for reversal. They were not grounds on which, without more, the court rendering the judgment could properly vacate it.

As a further (and final) ground of their motion, appellants stated that they, Jackson and Woodruff, had a good defense to the action, but were prevented from presenting it by reason of fraud, accident, surprise and excusable neglect. The statement that Jackson had a defense to the action and was prevented from presenting it was obviously untrue, for he was not a party to the action. As to Woodruff, the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it. In this, we cannot say that the court erred; much less that it abused its discretion.

The appeal, in so far as it is or purports to be an appeal from the order of June 29, 1939, is dismissed.

The order of September 26, 1939, is affirmed.

(Endorsed) Opinion. Filed Apr. 30, 1940. Paul P. O'Brien, Clerk.

A True Copy. Attest: November 8, 1940. Paul P. O'Brien, Clerk. By Frank H. Schmid, Deputy Clerk.

Heiser Exhibit W.

[Mandate.]

United States of America, ss.

(Seal)

The President of the United States of America.

To the Honorable the Judges of the District Court of the United States for the Southern District of California, Central Division—Greeting:

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division, before you, or some of you, in cause between M. E. Heiser, plaintiff, and Leonard Woodruff, et al., defendants, No. 7256-C an Order was duly entered on the 29th day of June, 1939, and an order was duly entered on the 26th day of September, 1939, which said orders are of record and fully set out in said cause in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, as appellants, against M. E. Heiser, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears;

And Whereas, on the 8th day of April in the year of our Lord One Thousand Nine Hundred and Forty and said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record, and was duly argued and submitted:

On Consideration Whereof, it is now here ordered and adjudged by this court, that the appeal, insofar as it is or purports to be an appeal from the order of the said District Court of June 29, 1939, is dismissed and the order of the said District Court of September 26, 1939, in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellants.

It is further ordered and adjudged by this Court that the appellee recover against the appellants for his costs herein expended, and have execution therefor.

(April 30, 1940.)

You, Therefore, Are Hereby Commanded, That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the 31st day of May in the year of our Lord One Thousand Nine Hundred and Forty.

Amount of costs allowed and taxed in favor of the appellee and against the appellants as per annexed bill of items, taxed in detail: $20.00. Paul P. O'Brien, Clerk.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed)

No. 9356. United States Circuit Court of Appeals for the Ninth Circuit. P. M. Jackson, etc., et al., vs. M. E. Heiser.

Mandate.

No. 7256-C U. S. District Court, Southern District of California Heiser v. Woodruff.

Filed June 19, 1940, R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

OBJECTORS' EXHIBITS.

[Objectors' exhibit 1, notice of unsecured property taxes etc., is identical with objectors' exhibit QQ, which appears at page 1113.]

Objectors' Exhibit 2.

[Prospectus of Golden State Gem Company of Nevada.]

In order to have a positive and assured source of raw materials and to more fully enjoy the profits derived from direct production, cutting, polishing and marketing Mother Earth's collection of gems, the Golden State Gem Company of Nevada was organized August 11, 1928, and qualified in California August 27, 1928, with a Capital Stock of 500,000 non par shares, 350,000 being common and 150,000 preferred with cumulative annual dividends of eighty cents per share.

The Company secured the control of the mining output of what they believe to be eighty percent of the blue sapphire production of the world and some exceptionally valuable proven diamond properties and claims of great potentiality. It has taken three years of intensive work to accomplish these far reaching results thru purchase of physical properties, by acquisition of stock, by consolidating and merging producing properties and companies and by long contract on the total output of large producers.

The Company has acquired 98% of the stock of the old Golden State Gem Company of California and there is in process of transfer from Australia, 10,000 preference shares out of 23,750 and 2,000 ordinary (common) shares out of 6,250 (40% of the total) of the stock of the Heiser Burmah Sapphires, Ltd. of Australia and a forty year contract on their entire mining output of sapphires and zircons in Sapphire Valley, New South Wales, Australia. That Company now controls sixteen miles of shallow channel gravels which have been tested thoroly by eminent geologists, practical sapphire miners and owners of years standing. From these

tests and estimates, and from actual washing of thousands of yards of gravel, the managing director of the Heiser Burmah Sapphires, Ltd., Morrie E. Heiser, prominently identified with sapphire mining for many years and recognized as an authority, estimates that the gravels under their control contain $30,000,000. of sapphires.

It is proposed to erect a dam and by short tunnels, cuts and pipe line, totaling twenty miles, to supply ample water to hydraulic these ancient Tertiary gravels for their valuable blue and yellow sapphires and zircons, much in the same way as hundreds of millions of dollars of gold were hydrauliced from the Tertiary gravels of California in the early eighties. It is estimated that $175,000.00 will amply take care of dam, tunnels, pipe line and hydraulic equipment and will furnish the cheapest known method of handling gravels in quantities, and should yield an almost unbelievable profit from these exposed, tested, proven sources. Thirty thousand (30,000) ounces of commercial sapphires mined from these gravels by crude methods were received by the Golden State Gem Company of Nevada in Los Angeles and were deposited in the vaults of the United States National Bank, Los Angeles, August 16, 1928.

The diamond properties, some forty-five miles from the sapphire mines, are known as the Monte Christo Diamond Mines, which with an adjoining holding have already produced over 220,000 carats of diamonds. The diamonds are found in the gravels of ancient (Tertiary) river channels with from five to thirty ft. thickness of gravels underlying a basaltic cap of from ten to three hundred feet thickness. The accompanying topaz, sapphires, zircons, tourmalines, and stream tin (up to 15 pounds per cubic yard) should take care of all overhead for hydraulicing methods. Edward F. Pittman, Government Geologist, reporting on the Diamond Fields in his exhaustive report on the Mineral Resources of New South Wales, Australia, says: "The richest claim, known as the Monte Christo, is understood to have been purchased recently . . . Examples of straight mine run showed 2285 diamonds recovered weighing 457½ carats @ £469.: — 90,274 carats @ £49,871" — which translated means $2.77 per carat!

It is proposed, at an estimated cost of $200,000, to dam a nearby river and by short tunnels and pipe line, some eighteen miles long, to hydraulic the diamond bearing gravels in much the same way as the sapphires. Hand methods have demonstrated that thousands of diamonds have been mined from the Monte Christo at an average cost of less than $3.00 per carat. The hydraulicing should not only give a yield at a much less cost, but should assure a continuous washing of gravels of great yardage with attendant larger number of diamonds recovered per unit of time. The water rights and dam sites have been secured. There is ample fall to take care of debris, no debris laws, but ideal canyons for rentention should there ever be any such laws. Full cooperation of the Australian Government has been assured.

The Company proposes to build a new and greatly enlarged lapidary plant in Los Angeles. The very latest design of high speed gem cutting machines have been ordered built to special specifications. The Australian lapidary plant of the Heiser Burmah Sapphires, Ltd., in cooperation with the government, has employed World War veterans, who have lost an arm or leg and the Golden State Gem Company proposes to bring some of these men to Los Angeles to teach some of Uncle Sam's World War veterans in the same condition to cut and polish stones in its new plant. It is to be the last word in equipment for cutting and polishing precious stones and gem work. The cutting of stones here will save 20% custom duty to the Company on all high class stones it cuts and sells in the United States.

Walter Calvin Smith, as a master in all classes of gem work, a recognized authority and connoisseur of years standing, president of the old Golden State Gem Company of California, will be in charge of the enlarged plant. Men who have been with the old company from five to eighteen years are dependable, interested lieutenants to Mr. Smith.

While the profits on diamonds, sapphires and opals should more than satisfy any man's expectations, the established business of twenty years has proven that a handsome and steady profit exists in cutting and polishing rubies, zircons, kunzites, tourmalines, peridot, topaz, aqua marine, lapis lazuli, spinel, garnets, amethysts, emeralds, moonstones,

sardonyx, bloodstones, turquoise, jade, agate, malachite, azurite, chrysophrase, chrysacola, coral, petrified wood, variscite, hyacinth and other gems.

The Secretary of the Company left for Europe on the 19th of the month to close a contract which has been proposed to the Company for $4,000,000.00 worth of gem sapphires, negotiations having been carried on for the last three months for a twenty-year contract with a minimum of $200,000. per year, which alone should yield more than an ample profit to take care of all preferred stock dividends.

Appraisal Engineer, John P. Kennedy, appraising for the State of California, August, 1926, made a report on the old Golden State Gem Company of California, which showed $3600.00 equipment and merchandise on hand for every dollar originally invested at the foundation of the business some eighteen years before, naturally no mention being made of thousands of dollars of profits taken out of the business during those fruitful years. With contracts on production and ownership of properties and hydraulicing of great quantities of diamond and sapphire producing gravels, would it be an Arabian Night's Dream to think that that record of eighteen years might be equaled in eighteen months, or would it be just another case of mass production?

Estimated Requirements for Increased Production.

Dam and Pipe Lines for Diamond Mine	$200,000.00
Purchasing of gems of all classes	100,000.00
Improvement to Lapidary plant in Los Angeles	50,000.00
Payroll	50,000.00
Cutting of Sapphires	100,000.00
Sales, overhead and unforseen contingencies	100,000.00
Steam shovels and mining equipment to be furnished under contract with Heiser-Burmah Sapphires, Ltd.	50,000.00
Payroll for that company	50,000.00
Dam and Pipeline for Sapphire Mines	175,000.00
Prospecting under contract with Australian American Gem Mining Syndicate	100,000.00
Total	$975,000.00

Objectors' Exhibit 3.

C/o. Bank of Australasia, London.

C/o. C. H. Voss, Esq., Australian Commonwealth Government Office, 6, rue Halevy, Paris.

Mr. Calvin Smith and Mr. Barstow, Golden State Gem Company, 726 San Pedro Street, Los Angeles. Etats Unis.

18th October, 1928.

Dear Sirs: I arrived in London and the buyers were there to meet me rearing to go (as our friend Rogers would say)! Unfortunately my registered parcels were not there on time, and there was a mix up with some of the Queensland stuff. Luckily I had my samples from America with me, which saved the day.

The quality was very pleasing to them and, after staying there five days, they returned to Paris and Germany. I waited in London until my registered packages arrived, which were beautiful in colour, and now am in Paris (C/o. Australian Commissioner, Paris, or old address in London, as above).

The French people are over-enthused about the colour from our mines, and I haven't the slightest doubt that I will, within the next three weeks, close on a contract for over five million dollars for our rough sapphires over a period of twenty years.

Our rough diamonds are greatly sought after here, and I could take orders for three or four million dollars a year without any trouble from the most responsible houses of France.

You never saw so much enthusiasm displayed in all your life as by these Frenchmen, with both hands and one head going at the same time, when they see a parcel of rough sapphires or diamonds. There is not the slightest doubt that the contracts can be closed here and to our entire satisfaction. I also believe that I can get them to take an option over some of our stock as spoken of by Coleman and Ritz of New York. This, I am sure, can be brought about to our entire satisfaction within the next six weeks.

also the prices which we require for our rough. It is only a matter of time to co lete it all. As you know the French do not think or act as quickly as the English or American people, so you must allow a little more time.

That is my end; now for yours.

Your cable stated that you had quite a lot of stuff possibly sold (or was it sold?). If it was not sold I hope it is by now.

I was in hopes of having a cable from you to say that you had sent at least £1,000 to Australia long before this. We must get money to Australia to have the other dredge moved to enable us to get the supplies on their way, because these people in Europe cannot be played with, and if we are going to take contracts we must execute them. To execute contracts you must have machinery, operating and money to pay pay-rolls, so that I hope that if you haven't sent £1,000 over by now you will do so on receipt of this, as I feel positive that the monies promised while I was there would have got there by now.

In this mail I am sending to the Golden State Gem Company the two thousand shares of the ordinary stock of the Heiser Burmah Sapphire Ltd. I am sorry that I did not send these from London, Calvin, but I had a stenographer there and she could not read her own notes—you never saw such a mess in your life—and I know you will pardon the delay because I have been under pressure ever since I got to Europe, with a frightful cold to make things worse!

Has Mr. Rogers sold any stock?

Give my kindest regards to the Scotch ~~Army~~ and her lieutenant. I hope she is keeping you well under the smoke screen! If you see Leonard give him my personal regards, and also any of our mutual friends at Hollywood.

I hope that you are not neglecting my teddy bears, and that they are getting their regular gum leaves. You must not neglect them, Calvin, as regards both leaves and water, as it is Winter there now and they must be fed regularly with young tips. The females should be breeding. Is Bobby's eye better? I hope you are looking after him and

taking care of them generally. They are one of our big assets, as you know.

I am trying to bring the conditions about here in Europe so that the Golden State Gem Company would be the agents for the cut sapphire in America from these different French firms, and am also trying to arrange for an agency for cut *emerald* and diamonds from this side.

I sincerely hope that you have sent me the samples of Kunzite, Turquoise and Taumoline as I previously asked for.

I want to emphasize the fact to you that you must acquire that emerald mine out in Cal, and do not fail. There is a big market for that small stuff here.

Please sit down and write me particulars, either you-Calvin, or Mr. Barstow, or our Secretary, of how much stock you have sold and how much cash you have in the treasury, and how much stock you have prospective buyers for.

I am sorry I did not write you two earlier but my work has been continuous since I got off the boat, and please, Calvin and Mr. Barstow, excuse me not writing to you separately but I am under pressure and for the time being I hope this will suffice—besides which English Stenographers in Paris are like teeth in a black hen.

With my very kindest regards to both of you, I am

Yours Truly,

MORRIE HEISER.

Objectors' Exhibit 4.

In the District Court of the United States for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. No. 7623.

Affidavit of Francis B. Cobb.

State of California, County of Los Angeles, ss.

FRANCIS B. COBB, being first duly sworn, deposes and says:

That he is an attorney admitted to practice before all of the Federal and State courts in California, and was employed by P. M. Jackson, Trustee in Bankruptcy in the above entitled matter in September, 1939 to make a motion on behalf of the trustee in the above entitled proceeding to set aside a default judgment which had been procured by M. E. Heiser against Leonard J. Woodruff in an action filed in the District Court of the United States for the Southern District of California, Central Division, in Case No. 7256-C.

That the printed record on appeal of the United States Circuit Court of Appeals for the Ninth Circuit in case No. 9356, entitled "P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee", is a true copy of the documents on file in said case No. 7256 in the District Court of the United States for the Southern District of California, Central Division.

That in addition to the documents contained in said transcript of record, affiant prepared a document entitled "Affidavit of Francis B. Cobb in Support of Motion to Set Aside Judgment", a true copy of which is attached hereto and marked "Exhibit A".

That on the hearing of said motion on September 26, 1939, before Honorable Geo. Cosgrave, District Judge, affiant asked for the privilege of filing said affidavit in support of the motion to set aside default, and judge asked affiant to what the same related, and affiant stated that it contained a summary of proceedings had before the Commissioner of Corporations, wherein M. E. Heiser and other witnesses testified concerning certain gems and sapphires, and the court stated that he would decline to allow affiant to file said affidavit.

That affiant had prepared in advance of said argument a document entitled "Points and Authorities in Support of Motion Under Rule 60B of the Rules of Civil Procedure for the District *Courts* of the United States and Under Rule 62 of this Court", a copy of which is attached hereto and marked "Exhibit B". The original of said document was filed with the United States District Court for the Southern District of California, Central Division in Case No. 7256-C.

That affiant proceeded to open the argument in respect to said matter, and argued each point of law contained in said "Exhibit B", and approximately the same argument used in said Points and Authorities, down to the sub-heading "Inclusion of Interest in the Judgment is Erroneous" (page 12 of Exhibit B), at which time the Honorable Geo. Cosgrave interrupted affiant and stated that he desired to hear argument from Mr. Meyberg. That upon Mr. Meyberg arguing that the Court had considered evidence for several days on the question of values and had made a just and proper judgment, the court interrupted the argument and made the following statements and order, which are truly set forth in the "Reporter's Transcript of Ruling and Remarks of the Court on Motion to Vacate Judgment and Set Aside Default", a true copy of which is attached hereto and marked "Exhibit C".

That thereafter affiant prepared a Notice of Appeal and took proceedings, as is more particularly shown in the transcript hereinabove referred to.

That affiant recalls no stipulation being made in connection with the matter, or any other proof or argument had at said proceedings, other than as hereinabove set forth.

FRANCIS B. COBB.

Subscribed and sworn to before me this 18th day of November, 1940. Emma W. George, Notary Public in and for the County of Los Angeles, State of California.

Exhibit A.

In the District Court of the United States for the Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al., Defendants. No. 7256-C.

Affidavit of Francis B. Cobb in Support of Motion to Set Aside Judgment.

State of California, County of Los Angeles, ss.

FRANCIS B. COBB, being first duly sworn, deposes and says:

That a motion has been filed by P. M. Jackson in the above entitled matter to set aside a default judgment entered against Leonard Woodruff.

That on Monday, September 18th, 1939, affiant received from P. M. Jackson a reporter's transcript in a hearing "In the matter of the investigation and examination of the International Gems" held before the Department of Investment, Division of Corporations of the State of California, in case No. 65704-LA. That said transcript in said proceeding was not discovered or known until after the previous hearing on the motion to set aside default judgment entered in the above entitled proceeding. That the plaintiff, M. E. Heiser, was represented in said proceeding by Harry A. Goldman as his attorney who cross-examined witnesses.

That attached hereto and marked "Exhibit A" is a copy of an exhibit offered and received in said proceeding, and attached hereto and marked "Exhibit B" is the testimony of Jefferson James Graves, whose testimony was given in said proceeding. That said testimony taken in said proceeding, as it appears in the transcript at pages 43 to 53, shows that the commercial sapphires, which is the subject matter of the above entitled action, were transferred to the Golden State Gem Co. of Nevada, and that M. E. Heiser was secretary of said company and was issued fifty percent (50%) of the stock of said company in exchange for assets and has at all times since said date had the stock records of said company.

That it further appears on page 81 of said transcript that M. E. Heiser returned from Europe in 1929 or 1930, after the bankruptcy of said company, and that he and defendant Walter Calvin Smith went to Houston, Texas and attempted to negotiate a gem deal with one Mrs. Jesperson.

That said transcript contains further testimony by M. E. Heiser as to his travels and business trips and transactions which are in conflict with his testimony heretofore given in the above entitled proceeding and in respect to his complaint on file herein.

That affiant will, on behalf of P. M. Jackson, as trustee for the estate of Leonard Woodruff, move the above en-

titled Court at the continued hearing of the motion of said P. M. Jackson on September 25th, 1939, to receive said transcript in connection with said motion.

FRANCIS B. COBB.

Subscribed and sworn to before me this 21st day of September, 1939. Emma W. George, Notary Public in and for the County of Los Angeles, State of California.

Exhibit A.

Consulate General of the United States of America, City of Paris, Republic of France, ss.

I, ALBERT LE QUINTREE, living at 233, rue du Fauborg Saint-Honore, Paris, France, depose and say,

That, as the Gerant of the International Trading Co., resident in Paris, I corresponded with Jefferson J. Graves, the Gerant of the above named company, residing in San Francisco, U. S. A., on the subject of handling for one, Maurice Heiser, the sale of sapphires in France and Europe; the above correspondence taking place in the year 1928.

That, in connection with the sale of sapphires I consulted with Marc Bietrix, residing at 7, rue Notre-Dame de Lorette, Paris; that the said Marc Bietrix is a jeweler, and dealer in precious stones and that in the name of the International Trading Company, 5 Boulevard de Strasbourg, Paris, I entered into an agreement with him whereby he was to receive one-third of all commissions on sales of sapphires or other precious stones for the account of Maurice Heiser or associated companies.

That, it was agreed that the above menfioned Jefferson J. Graves should come to Europe, with Maurice Heiser, who was then in California, for the purpose of facilitating the sale of a large parcel of *sapphire* the said Heiser claimed to have in the Safe Deposit Vaults of the Bank of Australia in London and additional parcels which the said Heiser also claimed to be en route from Australia.

That, in accordance with the above understanding the said Graves came to Paris and that on or about the fifth

of October 1928, I accompanied him to London where we met by appointment, the above mentioned Bietrix and one, Monsieur Poncet, Gem Cutter and Expert, of Paris; that Messrs. Bietrix and Poncet had come to London at my request, to see the display of sapphires and opals of Heiser, with the intention of buying any suitable lots of stones.

That, we four, that is to say, Messrs. Bietrix, Poncet, Graves and myself, met the aforesaid Heiser and went to the Vaults of the Bank, where we met the Bank's Manager and where the parcels, cans etc. were opened. There were also present Mrs. Heiser and if I remember correctly a Mr David Hack of London. That Heiser's display was most disappointing; that all of the stones he showed were of poor quality and small; that Heiser finally admitted that they had all been picked over many times in America and that Bietrix became very angry as we had promised Poncet that he would be surprised at the wonderful display and finally in exasperation cried out, "Show me one big stone, only one, one, one."

That, on being questioned about the opal, Heiser said that they had no way to cut opal in Australia, so that he had to drop it; that immediately thereafter Poncet found pieces of opal shown us by Heiser nicely sawed by an expert testing for the best specimens.

That, contrary to the statements made by Heiser we found that he did not control the Australian output, but that Treyfuss of London represented the Queensland Government and that he had large quantities of all sizes for sale.

That, Heiser assured us that in the nine packages arriving from Australia that we would see first grade sapphire, with many large stones (big as walnuts) and colors that could not be told from real Burman; that he also alleged that he had been selling to Indian Merchants Australian sapphire, which he called Burmah Blues and that the Indian merchants were then selling the same stones in France as true Burmah.

That, Bietrix and I were obliged to return to Paris so that we arranged with Heiser to bring his parcels there; that he promised to do so and to open the packages in our

presence; that he came to Paris with the parcels two of which were marked first grade, one of over a thousand cut stones so badly done that they were not acceptable and at a cost he said of about Two Dollars a carat, when first class work here costs forty cents a carat and the other packages lower grades. That Bietrix immediately sold what good stone he had for about Twelve Hundred Dollars.

That, Heiser tried to get us to form a French Company for the purpose of handling his output and that he wished this company listed in the Bourse for the purpose of making what he called a stock play; that his showing had been so poor that we lost confidence in him and all his statements and were unwilling to proceed further without definite guarantees that he would suppply sapphire of the quality and size demanded by our buyers, three of whom were willing to contract for $60,000.00 worth of sapphire each.

That, Heiser then tried to get us to form a company to buy all the sapphire of the Queensland Government, then with Treyfuss in London, to in this way he said control the market as we would have his supply. That at no time did or has Heiser shown us sapphire either in quality or quantity sufficient to control the market or to warrant our acting as his selling agent.

That, in an endeavor to instill confidence he told us that he had many influential people interested with him and recited that he had sold a large block of stock to Mrs. Loller and another to Mr. Loller.

That, in the office of Bietrix, Heiser showed a contract drawn in Los Angeles and which he alleged that Graves had seen and agreed to sign; that upon Graves telling him that he had never seen or heard of the contract he insisted that he had; that upon Graves again assuring him that he had never seen or heard of it he again insisted whereupon Graves told him that he was a liar. That he then tore up the contract and finally apologized saying that he thought Graves had seen it.

That, in the year 1929, at 6519 Selma Avenue, Hollywood, California, I met a Mr. Smith, who had been connected with Heiser and the Golden Gate Gem Company; that there was

present at this interview Jefferson J. Graves and his wife; that the said Smith told us that Mrs. Loller had given a note for Thirty Thousand Dollars to Heiser for the purchase of stock in the Golden Gate Gem Company; that he further stated that Heiser had not left this note in Los Angeles, but had taken it with him; that he further stated that it was not right as the stock was of no value and that Heiser knew it to be of no value; that Graves expressed *doub* and surprise that his mother would sign a note in any such amount and said that he could not believe it; that Smith assured him that it was the fact, but said it was strange that Heiser took the note with him, however that as he was treasurer of the Company he could do so. That upon my telling Smith that I had seen Heiser in a hotel on Shaftesbury Ave., London, where he had a large package of shares in the Golden Gate Gem Company that he was trying to sell, he replied, "Heiser had not the right to do that".

And That, due to the statements made by Heiser, the International Trading Company, *it's* Gerants, (myself and Graves) and Mr. Bietrix were all put to the loss of considerable sums and valuable time.

.....

A. LeQuintree.

Paris le 11 Janvier 1933 A. LeQuintree ..... Moins.

.....

.....

Subscribed and sworn to before me this 18th day of January, 1933. Maurice Pasquet, Vice-Consul of the United States of America at Paris, France. (Seal).

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Amer American eneral
Foreign Service
$2.00 Fee stamp
Paris, France.
Frs. 51.40 233 S-Honore

Exhibit B.

JEFFERSON JAMES GRAVES, Called as a Witness, Having been first duly sworn by Mr. Kelley, testified as follows:

Mr. Kelley: Your name, please?

A. My full name?

Mr. Kelley: Yes.

A. Jefferson James Graves.

Mr. Kelley: Your address?

A. 890 Bush Street, San Francisco.

Mr. Kelley: All right.

Mr. Metzler: Do you know Mr. M. E. Heiser?

A. I do.

Q. When did you first meet him?

A. Either in the latter part of 1919 or the first part of January, 1920.

Q. Did you have business transactions with Mr. Heiser subsequent to that and particularly in 1928?

A. I did.

Q. And that involved a trip by yourself to England?

A. Yes.

Q. State to the Commissioner in your own words exactly what happened and any conversations you had with Mr. Heiser at that time. I think it will expedite matters if you will just tell the story.

A. Mr. Heiser came to me—Do you want the dates?

Mr. Kelley: Yes, if you can identify them rapidly.

A. Mr. Heiser came to me in the Spring of 1928. The appointment was made through my mother—

Mr. Metzler: Your mother's name?

A. Maude J. Loller—who told me that Mr. Heiser had a large quantity of sapphires and opals and that she believed through my connections in France they could be disposed of advantageously. I met Mr. Heiser and had several conversations with him and he showed me a letter from a Mr. Corey in Australia addressed to Mr. Ira Clark saying that Corey & Company had financed Mr. Heiser in mining properties there. I arranged a meeting with Mr. Clark and called on him and he told me that he had known Mr. Corey since he was a boy and had perfect confidence in

his statements and believed that Mr. Heiser's statements were correct. I subsequently wired my associate in Paris—I own one-half of a French company—and I cabled Mr. LeQuintrec to ask him if he believed Mr. Marc Bietrix could arange for the sale of a large quantity of sapphires. He cabled back and stated they could if it was the quality and size needed on the market. In a letter of April 14, 1928, I wrote him telling him that Mr. Heiser had stated to me that he had 5070 ounces of pure blue sapphire on the way to London. Mr. Heiser also stated to me as evidenced by my letter to Mr. LeQuintrec of April 18th that he had several stones in India and that his collections were then sent to London as pure Indian stones. He claimed he had contracts with the Queensland government and through them gained control of 80 per cent of the world's sapphire production. He stated he wanted $60.00 an ounce for the best blues and we would have to make our profit on top of that. He said he had a parcel in London. After much discussion I sent over a small parcel of stones which Mr. Heiser stated were not for size but simply for color. Mr. LeQuintrec replied that the color was nice but they were so small it was impossible to tell very much about them. Finally, after much discussion I agreed to go over there with Mr. Heiser, or to meet him there, as he did not speak French and he had stated that France was the color gem market of the world. I left here, I believe, on the 17th of September, 1928. I think that was the date:—yes. I met Mr. Heiser with a Mr. Calvin Smith in New York but he had arranged to *sale* on a different ship. I went to Paris where I met Mr. LeQuintrec. From there we went to London, arriving October 4th.

Q. By "we" do you mean Mr. LeQuintrec?

A. Yes. And myself.

Q. And Mr. Bietrix?

A. No. We met Mr. Heiser and discussed the matter with him. He had some samples with him that he did not wish to sell and that day, October 4th, we met him and I wrote a letter to my wife in which I said I was doubtful about Mr. Heiser's ability to produce the stones he said he had because he talked principally of forming a company which he wished to call the International Gem Company

and that he would like to have the company formed, one in France and England and Germany and Italy, and in France to have it put on the Bourse.

Q. Did he mention stock play?

A. Yes, he said he would like to get a stock play. On October 5th, Mr. Bietrix, who was a jeweler and merchant of fine stones and also a manufacturer of fine watches, arrived with Mr. Ponet. Mr. Ponet was of the firm of Gruet et Cie, one of the largest gem experts in France on colored stones. We went with Mr. Heiser and arranged an appointment to go to the bank on Saturday, October 6th. We went to the Bank of Australasia on the Strand in London. There we met Mr. Heiser and Mrs. Heiser and the manager of the bank, a Mr. David Hack, a friend of Mr. LeQuintree and also Mr. Bietrix and Mr. Ponet were there and some tin cans and bags were opened in the presence of all of us. After going over them thoroughly the experts were disgusted and said it was nothing but rubbish, that many of the stones had been dried on a wheel. Mr. Bietrix particularly asked to see one large stone such as Mr. Heiser stated he had and he could not show one. He then admitted that this stock had been there for a long time in the bank but that he had other parcels coming from Australia, due any day; and among them would be the finest of pure blue and large stones. Mr. Bietrix and Mr. LeQuintree were so disgusted they went back to Paris. Mr. Ponet had come to London with a large amount of money to buy stones and went to Tryfuss & Company, who are the big dealers in colored stones and sapphires from Australia, and made his purchases there. Mr. Heiser then stayed in London until the stones arrived. Mr. Heiser was to bring the stones to Paris and he promised not to open the bags until he got there. On October 11th we met Mr. Heiser in Paris. He had one parcel which Mr. Bietrix sold for him right away. I think 30 ounces for 35,000 francs, on which he had a brokerage of 10 per cent. My French associates were very much disgusted at his showing and at the expensive trip to London where the exchange was all against them and continually asked him to show more stones, which he was unable to do, but he continually tried to get us to form a French company. He had such a poor showing that we

would not consider anything of the kind. We did, however, tell him if he could produce the sapphire he claimed, that we could sell it and would do so. He never did produce it and never has. I came home, feeling that my French associates did not feel any too kindly toward me, and out about $2500.00 of expense for the trip.

Q. Did Mr. Heiser exhibit to yourself and Mr. LeQuintrec and Mr. Bietrix and Mr. Ponet and the others at the bank in London an agreement for your signature which he stated you would sign?

A. No, he exhibited that in Paris in Mr. Bietrix' office.

Q. What was that agreement?

A. He brought out an agreement, stating I had seen this agreement in Los Angeles and that I had agreed to sign it. As I recall it was an agreement by which the International Trading Company, of which I own one-half—it is a French company—would agree to purchase a certain quantity of these stones. I had never seen the agreement before and so told him and he insisted I had and I told him I had not and he insisted again and I told him in no uncertain terms that I do not care to use in front of the young lady here, that it was not so. He then tore the agreement in half.

Q. You never had seen such an agreement?

A. Never.

Q. Never in Los Angeles?

A. No.

Q. You never agreed to purchase?

A. Never agreed to do anything of the kind. I simply agreed if he furnished the quality and size and quantity of stones that he said that he had, that we would sell them for him and that we had three big firms over there that would take $60,000.00 worth a year.

Q. He never did produce them?

A. He never did produce them.

Q. You mentioned the formation of a company, International Gems, that he wished to form in France?

A. Yes.

Q. And he wanted to sell stock of that company?

A. He wanted us to form this French company. My associates and myself. In Paris. And have it entered on

the Bourse to sell stock, he stated, to develop the mines and, as he put it, he wanted to get a stock play.

Q. Mr. Heiser had business transactions with your mother Mrs. Loller?

A. I am so told.

Q. You do not know of those transactions of your own knowledge? I mean your mother's transactions with him?

A. No.

Q. A suit was commenced against your mother by Mr. Heiser?

A. Yes.

Q. And shortly thereafter I believe your mother died?

A. Right.

Q. And what happened to the suit?

A. An executor of my mother's estate, the suit was transferred and brought against me.

Q. You were substituted as defendant?

A. I was substituted as defendant.

Q. It was tried?

A. Tried in San Francisco.

Q. You are familiar with the action taken?

A. Yes.

Q. Yes, $35,000.00 and interest as evidenced by two notes, one in the sum of $5000.00 and one $30,000.00. The note for $5000.00 was given by my stepfather to my mother, on which she had written "Transferred to M. E. Heiser" and signed her name. The other note was a note signed by my mother for $30,000.00 in favor of Mr. Heiser.

Q. M. E. Heiser?

A. M. E. or Moris. I don't know.

Q. Anyway, Mr. Heiser. What happened to that suit, of your own knowledge?

A. Mr. Oscar Samuels represented us. It was tried in San Francisco and we won the case.

Q. You recovered a judgment against Mr. Heiser?

A. Post costs.

Q. And that has not been paid to date?

A. As far as I know, it has not. Mr. Heiser, I understand, from Mr. Samuels, stated he was unable to pay it as he did not have the funds. Just what arrangement has been made I do not know. I think he agreed to pay half.

Q. Mr. Kelley: That was recently?
A. In the last few months.
Q. Mr. Kelley: Has that judgment become final?
A. Yes.
Q. Mr. Kelley: There has been no appeal?
A. No.
Q. Mr. Kelley: No appeal taken by Mr. Heiser?
A. No.

Mr. Kelley: Do you know the case number?

A. No.

Mr. Kelley: Do you, Mr. Metzler?

Mr. Metzler: No, not yet. I just found out about the finality of the judgment last night.

Mr. Kelley: Through the case number we can find what the record in the court shows.

Mr. Graves: February 23rd and 24th I was on the case and then it was put over.

Mr. Kelley: This year?

A. Yes.

Mr. Metzler: That is the date of the trial?

A. And the 2nd and 3rd and 4th and 5th of March.

Mr. Metzler: I show you a copy of an affidavit. Will you examine that. Is that a correct copy?

A. As far as I can remember. I would like to keep the original.

Q. I would like to introduce this as a copy of the original and have a photostat of the original substituted later, if necessary.

Mr. Kelley: This is a copy of an affidavit dated apparently January 11, 1938, by Albert LeQuintree in Paris, France, and will be entered as Department's Exhibit #13. All right.

Mr. Metzler: Mr. Graves, do you know whether or not any legal action was taken against Mr. Heiser in Paris or in London? Criminal action?

A. Not of my own knowledge. I was told it had been by Mr. Bietrix. Do you wish me to state what he told me?

Mr. Kelley: We would have to substantiate a thing of that kind. That is going rather far afield.

Mr. Metzler: That is all. One further thing. I show you what purports to be a copy of a letter dated November 14, 1928, from Moris Heiser to "My dear Maudie & Will". State what that is.

A. It is a copy of a letter my mother handed to me that she received from Mr. Heiser and "Maudie" is referring to my mother and "Will" to my stepfather.

Q. And the original of that letter, do you know where it is?

A. My correspondence shows I sent it to Mr. LeQuintree. It is probably in our files in Paris.

Q. Did you see the original?

A. Yes, I did. And had this copy made.

Q. And the original was signed by Mr. Heiser?

A. Yes.

Q. I would like to introduce this copy of letter.

Mr. Kelley: Department's Exhibit #14. Is this part of your record? Do you want this back?

A. I think I have another copy of that.

Mr. Kelley: If not, we will be glad to make copies and give this back to you. In order to be certain, we will have a copy made of that and send this back.

Mr. Metzler: Calling your attention to the first sentence in that Letter: "After many interviews in Paris with Lequentric, Beatrix, and Jeff"—Jeff is yourself?

A. Yes.

Q. —"Mr. Beatrix and Lequentric came to the conclusion that on account of the excessive incorporation taxes in Paris, it would be more advantageous to all concerned, if a corporation was formed in California, as the selling corporation, and that corporation to contract with the Golden State Gem Co. of Los Angeles, for 20 years at our prices." That statement as to the conclusion as to the rea-

son for not forming the Paris Company, do you know whether that is true or false?

A. It is not true.

Q. I think that is all.

Mr. Kelley: All right. Thank you very much, Mr. Graves. I think you had better get for the record, Mr. Metzler, a copy of the judgment.

Mr. Metzler: Yes, I will get that into the record.

Mr. Kelley: Let us continue this matter to Los Angeles for about a week.

Department's Exhibit No. 14.

Nov. 14, 1928,

My dear Maudie & Will:

After many interviews in Paris with Lequentric Beatrix, and Jeff. Mr. Beatrix and Lequentric came to the *conclusiong* that on account of the excessive incorporation taxes in Paris, it would be more advantageous to all concerned, if a corporation was formed in Calif, as the selling corporation, and that corporation to contract with the Golden State Gem Co., of Los Angeles, for 20 years at our prices. Unfortunately Jeff had to leave for home before his associates had found what they thought was the best solution to handle the rough gem trade in Europe, so a week after Jeffs departure, they finally decided this the best course to take, especially as the Queensland Government are offering us their entire stocks, which means the control of Queensland gems and practically the whole of N. S. W. this is a very wonderful opportunity for Jeff, but I think it would mean his living in Paris until the selling organization was properly established in Europe.

Mr. Beatrix sold *onr* parcel of seconds (30 ounces) for 35,000 francs for which I allowed them 10%, this was done chiefly for them to try out the markets.

Jeff has Major Mallallie, Mr. Fickett whom I am sure will help and with our assistance he should be able to suc-

cessfully form a company to get all the money he needs to successfully operate his sales organization in Paris.

As you are aware Maudie we have about 25,000 ounces of cheap industrial sapphire in N. Y. if you or Jeff need them for the formation of this corporation, you can have them, and it should enable you to control the selling corporation. These stones are in the Lincoln Vaults, 60 East 42nd St., N. Y. there is a small accumulation of rent on them, but no other incumbrances, so if you need them for the above purpose consider this paragraph a deed of gift.

You know Maudie how anxious I have been for years to get a European connection like you and Jeff have kindly put me in touch with, of course it will take a man like Jeff to handle the french merchants, as he can speak their language, I can't.

I had to go to London to make arrangements about the rough sapphires belonging to the Queensland Gov. and I wrote full particulars about the gems to Mr. Beatrix and Lequentric, because they are offered to me at a greatly reduced price of what they cost.

Mr. Lobree was consuring me about opening a cutting plant in Euin Europe, Maudie this is absurd as you must know.

I was very much worried about you going to the hospital but after hearing from Mrs. Benjamin that it was for gland treatment and did not think it serious I was very much relieved and sincerely hope you are home now enjoying the best there is in life.

Well Bill how are you and how is the Reay Estate going I hope you closed on that big deal you were working on when I left.

The family are all having a lovely time, but think there is no place like California.

Trusting that you are well and hoping to see you soon, and that you were *hally* over the arrival of the new baby and that you will have much happiness from the *leetle* tot, also that Bill is a proud Grandfather, gee Bill I would love

to *sell* you running around about 3:30 a. m. in your little short shirt, nursing the baby.

That large light opal that I said we would give to your Jamie, well we did and then gave it to Mr. Beatrix to carve her figure in it in the Balloon dance, and she was *very* pleased and gave us some of her photos, which I will show you on our return.

Will appreciate getting a cable from Jeff to let me know if he will form the corporation or not as I am under a very heavy expense here and just waiting to hear from him now.

I am cabling to you this week and telling you that the french agents want Jeff to form a company in America and contract with the Golden State Co. for twenty years, at our prices.

There is no douht Maud and Will that the French markets control the sapphire markets for the world and with Jeff's connection there is not the slightest doubt that he can get the best business in Paris for these gems, and I feel the same as the frenchmen that it is better for all concerned, that the company be formed in American, Taxes and many other conditions prevail in France that make it almost impossible.

I would have written to you earlier on this matter but I did not, as it took several weeks before this final decision could be made. Now I sincerely hope Maudie that you can help Jeff to hurry things along, as Australian end are urgently requesting me to return to Australia, and the French merchants need large quantities of large best rough and I have not any more left.

Trusting that this letter finds you in the best of health and enjoying the best

I am

Very Sincerely,

(Signed) Morie Heiser.

Exhibit B:

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al, Defendants. No. 7256-C.

Points and Authorities in Support of Motion Under Rule 60B of the Rules of Civil Procedure for the District Courts of the United States and Under Rule 62 of this Court.

Statement of Facts.

There appears from the files and records of the proceedings herein the following facts:

The complaint was filed July 11, 1935; summons was issued on that date, summons was returned on July 12, 1935; that an alias summons was issued on April 21, 1937; that a petition and affidavit was filed on January 25, 1939, requesting an order permitting one E. M. Daniels to serve the alias summons in the place and stead of the United States *Marshall*. The order was entered by Judge Yankwich January 25, 1939, granting said petition, which order has not been changed or modified and was in effect at the date that the United States *Marshall* served Howard Woodruff at 2446 Inverness Avenue, Los Angeles, California, the son of the defendant, on February 9, 1939. Default was entered on February 23, 1939, and judgment on March 20, 1939. Calvin Smith, one of the defendants, has appeared and answered in the proceeding and the proceeding is still pending as against John T. Coleman and the other defendants. After the entry of the judgment a motion was made by Leonard Woodruff to set aside the default and judgment, and the Court entered an order re-opening same for the purpose of receiving evidence on the question of damages alone and not as to the other defense claimed and asserted by said Leonard Woodruff, and after receiving said evidence entered a minute order permitting said judgment to stand and directing plaintiff's counsel to prepare a final order which has not yet been prepared.

Leonard Woodruff was adjudged a bankrupt by the United States District Court for the Eastern District of Oklahoma on July 5, 1939. P. M. Jackson has been elected trustee of his estate and has presented a motion to set aside said default and judgment and all orders entered after judgment and petition to allow him to intervene and to answer.

Trustee is a Proper Party to Intervene and to Move to Set Aside a Default Judgment.

The trustee is the legal representative of all the creditors in the bankrupt estate and is permitted by the Bankruptcy Act to:

"(b) The Court may order the trustee to enter his appearance and defend any pending suit against the bankrupt." U.S.C.A. Title II Bankruptcy 381-29.

and is vested under Section ..... of the Act:

"Powers (Bankruptcy) which he might have exercised for his own benefit."

The case in point where a trustee has been held to have the right to move to set aside a default judgment is

Nuckolls vs. Bank of California, 10 Cal. (2d) 273 where it is stated:

"The further contention is made by appellants that the court had no judisdiction to entertain the motion of the trustee to set aside the judgment theretofore rendered in said action and to permit said trustee to file an answer in said action under section 473 of the Code of Civil Procedure, or under any other provision of law, for the reason that the judgment as against Carbtree had, upon the dismissal of the appeal of Crabtree, become final, and immune from attack by any person or for any reason whatsoever. Upon the dismissal of Crabtree's appeal, the judgment as between him and the other parties to the action became final, and, as to the parties to said appeal, the judgment was immune from further attack, but the status or effect of that portion of the judgment determining the rights of Crabtree was after such dismissal no different from that of the balance of said judgment determining the rights of

the other parties in said action. The time for an appeal or motion for a new trial had then *expires* and the judgment as a whole had become final. The court had the same jurisdiction to entertain a motion to set aside the judgment determining Crabtree's rights as it had to entertain said motion respecting the other parties to said judgment. The authorities cited by appellants in support of this contention are beside the mark as they are predicated on a false premise. In citing them appellants assume that the Crabtree portion of the judgment is immune from attack under section 473 of the Code of Civil Procedure, or under any other provision of law, which assumption, as we have shown, is not the case.

Equally untenable is the contention of the appellants that the trustee, not being a party to said action, could not apply for relief under section 473 of the Code of Civil Procedure, and, therefore, was without any right to move the court to set aside the judgment and permit him to appear therein and contest the claims of the appellants."

Also in the case of

Hammond Lumber Co. vs. Gilkey, 120 Cal. App. 252.

See

Colliers 134 Ed. 420
In re Aronson, 27 ABR (NS) 274.

The right to intervene has been passed upon in the case of

Palmer vs. Bankers Trust Co. 12 Fed. (2d) 477;
U. S. vs. Chicago Terminal, 188 Fed 292;
Credits Commentation vs. United States, 177 U. S. 311, 20 S.CT. 636.
Plummer vs. Brown, 64 Cal. 429;
McKendricks vs. Western Zinc, 165 Cal 24.

Default Judgment is Invalid for Defective Service.

A default judgment is invalid unless process or summons was served upon the defendant as provided by law.

Smith vs. Jones, 171 Cal. 513;

Waller vs. Weston, 125 Cal. 201;
Rogers vs. Schneider, 205 Cal. 202.

This action was commenced in 1935 and the process served was an alias summons issued on April 21, 1937. This was before the adoption of the rules of Civil Procedure which became effective on September 20, 1938, and the Act of Congress adopting said Rules being the Act of Congress of June 19, 1934, CH 651:

Be It Enacted***That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States******Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

The Rules of the United States District Courts for the Southern District of California and the Conformity Act which was in effect Sec. 724 of 28 U.S.C.A. Judicial Code R. S. Sec. 914 at the time this action was commenced provided for the service upon the defendant personally and the said Rules of this Court still so provide. The rules adopted by the Supreme Court known as the Rules of Civil Procedure for the District Courts of the United States contain no provisions making the service of process by substitute service retroactive or affecting pending actions. We submit that the defendant is entitled to insist upon the service of a process being issued in 1937 being made in accordance with the law then in effect and the said process still outstanding cannot be affected by the adoption of the R.C.P. without violating the Congressional Act providing for said R. C. P.

Under the order of January 25, 1939, this Court designated E. M. Daniels to serve the summons in the place and stead of the United States Marshal. This order, not having been modified or changed, the United States Marshal had no authority to make, or attempt to make, the service of process. Since only one original summons was outstanding, the same should have been in the hands of E. M. Daniels and not in the hands of the *Marshall*. Both of said parties could not have served the same, and the Courts have gone so far as to set aside a default judgment where the wrong *Marshall* served the process. See

Doherty vs. Kalmbach, 87 Fed. (2nd) 539;
United States vs. Mitchell, 223 Fed. 805;
J. E. Petty vs. Dock Contractor Co., 283 Fed. 341;
St. Louis Southwestern Railway vs. Yates, 23 Fed. (2d) 283;

Rule 4-C is stated by the court in United States vs. Mitchell, supra:

"If the *marshall* is commanded by the writ to serve it, no other person may perform that duty****"

Higgins vs. Calff. Prune Growers, (CCA) 282 Fed. 550;
Cleaves vs. Funk, 76 Fed. (2nd) 828.

The Judgment Was Prematurely Entered in That the Complaint was Based Upon a Joint Liability on an Alleged Conspiracy and Judgment was Entered as Against One Defendant prior to Trial of the Issues With Respect to Other Defendants.

As stated above the co-defendants of Leonard J. Woodruff have answered but the action is still pending with respect to them, and plaintiff's complaint is based upon one claim although stated in three separate causes of action. No right existed prior to the adoption of the Rules of Civil Procedure for the entry of one judgment in an action at law and this action is governed by the law as it stood at the time of the filing of the action, but if the Court differ with us on this premise the rule has not been changed by the Rules of Civil Procedure since Rule 54, Subdivision "B" provides:

"When more than one claim for relief is presented in an action, the Court at any stage, upon a determination of the issues material to a particular claim******may enter a judgment disposing of such claim."

No provision is provided permitting a judgment on a joint obligation as to one defendant and therefore proceeding with the trial of the case as to the other defendants.

Hill vs. Lansing, 91 U. S. 160;
Moore's Federal Practice, Vol. 3, Sec. 3167;
Frow vs. De La Vega, 15 Wall. 552;
21 Law Edition, 60.

Schofield vs. Palmer, 134 Fed. 753, in which the rule is stated:

in which the rule is stated:

"The common law rule that prevails in this state as in a majority of the states is that in a joint action the judgment must be against all the defendants or against none of them. Formerly section 19 C 177 allowing judgment against less than all the joint contractors, does not apply where one of the defendants alone files a defense which is not personal, but goes to plaintiff's right of recovery against all defendants. It follows the notice of motion for judgment should be quashed as to both defendants."

The Complaint Does Not State a Cause of Action.

Moore's Federal Practice, Vol. 2, 2381, states a rule with respect to the rights of intervenor to question the complaint stating a cause of action. The rule is stated:

"Finally the intervenor may desire to question the merit of a claim or defense. Thus he may desire: (1) to question whether the allegations of the complaint are suffiicient: (2) to contest a claimant's right to a certain amount of damages: (3) press counter-claim.

There seems to be no doubt that an intervenor having an absolute right to intervene is able to raise any one of these questions." Clymore Prod. vs. Thompson, 11 Fed. Sup. 791: 63 Fed.

The rule is stated in

Marion County vs. Ridge, 13 Fed. (2d) 969, 971.

"There was yet another 'good cause' shown for vacating the judgment on the motion of the defendant viz: that the declaration did not state a cause of action.

"A default admits only what is well pleaded, and therefore, in order to sustain a judgment by default, plaintiff's declaration, complaint, petition or statement of claim, must allege with clearness and certainty sufficient facts to constitute a good cause of action. 34 C.J. 153; U. S. vs. Bell, 135 Fed. 336; 68 C.C.A. 144."

The rule is again stated:

"But a default along whether the action be in tort or contract, like a judgment or demurrer overruled, has no conclusive effect upon the final judgment to be rendered. It cures no defects in the declaration or complaint which a general demurrer would not have aided Love vs. Union etc. 242 U. S. 357, Cyc Fed Proc. 1519."

"The general rule respecting judgments that they should follow the pleadings, applies to default judgments. Glem vs. Mitchell, 282 Fed. 440."

Also "Cyc Fed Proc. 1521. The court will in a proper case grant leave to renew the motion to set aside a default."

See

Mobile Ship Bldg. vs. Fed Bridge Construction, 280 Fed. 292, cert. denied, 260 U. S. 726, 67 Led. 483.

The Complaint Does Not State a Cause of Action for Fraud.

The rule is stated in:

Consolidated Reservoir & Power Company vs. Searborough, et al. 216 Cal 698.

"The action sounds in fraud, and has for its purpose the recovery of certain damages and properties which it is averred the plaintiff has respectively suffered and lost by reason of an asserted fraudulent conspiracy between the defendants. The alleged fraudulent transactions of which complaint is made occurred in 1924. This action was commenced more than four years thereafter. In brief, the second amended complaint alleges that the plaintiff corporation was the owner of certain described real and personal properties of a designated value; that in the year 1924 this property was diverted from and *lot* to the plaintiff by reason of a fraudulent scheme and conspiracy between the defendants by means of which conspiracy the properties described were improperly employed to cover and satisfy the defalcations of one of the defendants in a matter in which the plaintiff corporation had no interest or connection: that

this result was accomplished by means of false and fraudulent representations being made to the board of directors of the plaintiff corporation by three of the defendants who were then members of said board; that it was falsely represented to such board that the property was being used to care for certain debts of the corporation; that in furtherance of such conspiracy and in order to conceal the fraudulent character of the transactions leading up to the dissipation of the plaintiff's properties, the defendants caused the minutes of the meetings of the board of directors, at which these transactions were consummated, to remain silent thereon: 'that the fraud hereinabove alleged was not discovered until on or about the first day of August, 1928, for the reason that the minutes of the said meetings of the said Board of Directors fail to disclose the transactions or the facts hereinabove alleged, and for the further reason that the defendant directors of said Robert P. Scarborough (who was not a member of the board) concealed the facts hereinabove related from the stockholders of the plaintiff corporation; that the facts hereinabove alleged were not known or discovered by the stockholders of the corporation or the present directors until an investigation of the affairs of the corporation was made by the present directors on or about August 1, 1928, which revealed the said facts'; and that as a result of such fraudulent conspiracy the plaintiff has suffered damage and loss of a character and to an extent specified in the prayer of the complaint.

To this complaint the defendants demurred both generally and specifically. Each demurrer, among other things, raises the bar of the statute of limitations. The trial court sustained the demurrers without leave to amend, whereupon plaintiff prosecuted this appeal."

(Citing cases and quoting from Wood vs. Carpenter U. S., then cites many cases including Galusha vs. Fraser, 178 Cal. 653, 657; 174 Pac. 314, 312.)

Again, quoting from the case of Consolidated, etc., vs. Scarborough, et al, 216 Cal. 703:

"The *cast* last above *coted* clearly and concisely states the law. It is there declared: 'Where the plaintiff sues for

relief on the ground of fraud and seeks exemption from the three years period of limitations for the reason that he did not discover the fraud until after it was perpetrated, he must not only show (1) that he did not discover the fraud until within the three years next before the action was begun and (2) that the fraud was committed under such circumstances that he would not be presumed to have had knowledge of it at the time, but (3) he must also set forth the times and circumstances under which the facts constituting the fraud came to his knowledge so that the court may determine from the allegations of the complaint whether the discovery was within that period.

"Tested by the rules set down in the cited cases, we are of the view that the complaint in the case at bar is deficient and that the trial court therefore properly sustained the demurrers thereto. It may be conceded that the present complaint satisfies the first two requirements above enumerated in that it alleges that the fraud was discovered within three years of the commencement of suit and that it was committed under such circumstances as to preclude any presumption of knowledge on plaintiff's part at the time of its commission. But, as already indicated, the cases recognize and declare the existence of a third essential to a valid and proper pleading in a case of this character, viz., an allegation as to the circumstances surrounding the discovery of the fraud complained of. Such an allegation is necessary in order that the trial court might readily determine whether or not the facts and circumstances leading to the discovery of the fraud existed for more than three years prior to the commencement of suit.

See

Wood *vs.* Carpenter, 101 U.S. 135, 140, 25 Law Ed. 807

where the rule is stated:

"In this class of cases the plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentations were discovered,

and what the discovery is, so that the court may clearly see whether, by ordinary diligence the discovery might not have been made—A general allegation of ignorance at one time and of knowledge at another is of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner****** A party seeking to avoid the bar of the statute on account of fraud must aver and show that he used due diligence to detect it, and if he had the means of discovery in his power, he will be held to have known it*****. There must be reasonable diligence; and the means of knowledge are the same thing in effect as knowledge itself. The circumstances of the discovery must be fully stated and proved, and the delay which has occurred must be shown to be consistent with the requisite diligence."

A very similar case arises in the case of

Blumen vs. Clayburgh, 51 Pac. (2d) 10 Cal. App. 2d 63,

where the Court stated the rule:

"There is one debatable question involved in the appeal not stated by either party but nevertheless determinative and that is whether the complaint sufficiently pleads the times and circumstances under which the facts constituting the fraud were brought to plaintiff' knowledge so that the court could determine whether the complaint was filed within the period covered by the statute of limitations.

The complaint alleges that plaintiff incurred an obligation with certain defendants engaged as stockbrokers in the city and county of San Francisco through the purchase of stocks on margin, and to secure his indebtedness deposited with the brokers certain securities; that when the indebtedness amounted to about $3,500 the brokers sold the securities for approximately $5,800, satisfied the indebtedness and paid the balance over to the defendant Fidelity and Deposit Company; that this sale was consummated on March 25, 1926, at a time when the plaintiff was a fugitive from justice, having been indicted by the San Francisco grand jury for grand theft on February 18, 1926; that on May 1, 1926;

plaintiff was located in London, England, arrested, and returned to San Francisco to stand trial under this indictment; that the plaintiff arrived in San Francisco on August 11, 1926, and remained in the county jail of that county from said date until April 29, 1927, when he was removed to the state penitentiary at San Quentin pursuant to sentence following a conviction on March 12, 1927, on that indictment; that he remained in the state penitentiary from April 29, 1927, until June 19, 1933, at which time he was released on parole. The complaint in this action was filed March 22, 1934. The foregoing facts and no more are relied on to support the bald allegation that the alleged fraud was 'not known or discovered by the said plaintiff until the Month of May, 1927.' At this point it should be noted that plaintiff was delivered to the state penitentiary on April 29th and that the alleged discovery in 'the month of May' might have occurred two days after his delivery; hence his discovery during the first days of his incarceration was a most fortuitous circumstance for him because, his action accruing at that date, he could claim a suspension of the statute of limitations during the full six years of his incarceration under the provisions of section 352 of the Code of Civil Procedure.

With these facts before us it is necessary for us to determine not whether the complaint states a cause of action in fraud but whether it sufficiently pleads 'the times and the circumstances under which the facts constituting the fraud were brought to his knowledge, so that the court may determine whether the discovery of these facts was within the time alleged; . . . ' (Lady Washington C. Co. vs. Wood 113 Cal 482, 487, (45 Pac. 809, 810).). To amplify we might assume that the complaint states a good cause of action, but this is not enough; the duty rests first upon the trial court to determine whether the alleged discovery was within the time alleged, and the determination of the trial court on that question is controlling upon us unless the facts alleged are such as will show a manifest abuse of discretion.

In a case closely allied the Supreme Court in Consolidated R. & P. Co. vs. Scarborough, 216 Cal. 698, 703 (16 Pac. (2d) 268), emphasized the necessity of pleading the facts and

circumstances surrounding the discovery of the fraud complained of in order that the trial court might readily determine whether or not the facts and circumstances leading to the discovery of the fraud existed for more than three years prior to the commencement of suit.' Numerous cases are there cited in support of the rule and the Supreme Court further emphasized, on the authority of Wood vs. Carpenter, 101 U. S. 135, 140 (25 L. Ed. 807), and the California cases theretofore cited, that the means of knowledge are the equivalent of knowledge. Quoting from Bancroft vs. Woodward, 183 Cal. 99, 108 (190 Pac. 445), 'where a party has knowledge of facts of a character which would reasonably put him upon inquiry, and such inquiry, if pursued, would have led to discovery of the fraud or other ground for rescission, he will be charged with having discovered the fraud or other ground as of the time he should have discovered it, that is, as of the time when he would have discovered it if he had with reasonable diligence pursued the inquiry when he should have done so.'

In the instant case the allegations to the effect that plaintiff did not discover the alleged fraud until immediately after he had been confined in the state penitentiary is insufficient under the rule of the authorities cited. No facts nor circumstances leading to the alleged discovery at that time are pleaded."

The Complaint Does Not State a Cause of Action for Conversion.

Plaintiff relies upon a conversion by judicial sale. The statute of limitations is three years from the date of the sale and discovery has nothing to do with the extension of the statute.

Plaintiff's complaint shows in subdivision (f) of paragraph X that plaintiff transferred the property to the Golden State Gem Company of Nevada, but in subdivision (d) of said paragraph X that the defendant Smith was given access and the right to withdraw said merchandise together with the right to sell the same.

"Where the right or authority is given to sell personal

property for another, a conversion of the property does not result from the failure to pay over the proceeds for an action in conversion is not the proper remedy."

Thompson vs. Culver City Motors, 4 C. A. (2d) 639.

Also

An action for a conversion will not lie unless the ownership of the property and the right of possession of the goods are in the plaintiff. See

Hilmer vs. Hill, 138 Cal. 134;
National Lumber vs. Tejunga Val. Rk. Co. 22 C. A. 726;
National Finance vs. Lynch, 94 C. A. 557.
D'Alessandro vs. Pickford, 22 Cal. App. 2nd 242.

Inclusion of Interest in the Judgment is Erroneous.

Section 580 of the Code of Civil Procedure, Equity Rule 55, the cases are to the effect that a default judgment cannot exceed the amount demanded in the complaint, and since no conversion could occur for the merchandise sold by Smith, which he had the right to sell pursuant to plaintiff's agreement as alleged in paragraph X, nor can interest be allowed until a demand was made for the return of the merchandise, and the complaint not showing when the demand was made, the allowance of interest on the alleged claim of conversion must fall. If the plaintiff relies upon the execution of sale sold on said execution or only a portion thereof, to-wit: the industrial sapphires. The judgment allowing interest on the amount sued for by plaintiff, not from the date of demand, but from the date of the execution sale, is contrary to the law.

The Judgment Does Not Conform to the Complaint.

The complaint is based upon three separate counts. The judgment does not show on which count the same was entered, nor does the same conform to any particular count, or whether the same is based upon fraud, or upon conversion, or upon breach of contract and the same is erroneous in that respect.

14 Cal. Juris. 901;
Howe vs. Key System Transit Co., 198 Cal. 525, 529.

The Complaint is Barred by Laches and the Statute of Limitations.

"It is the policy of the law to prevent the making of a claim for fraud after the lapse of many years." Nighbert v. First National Bank of Bakersfield, 93 C. A. D. 654; 79 Pac. (2d) 1105.

Haley v. Santa Fe Land Inmprovement Company, 5 C. A. (2d) 415:

"In cases where relief for fraud is sought, by action commenced more than three years after the perpetration of the fraud, plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud was discovered and what the discovery is, so that the court may clearly see whether by ordinary diligence the discovery might not have been sooner made, and a general allegation of ignorance at one time and of knowledge at another is of no effect, but if plaintiff made any particular discovery it should be stated when it was made, how it was made and why it was not made sooner.

In such an action, a party seeking to avoid the bar of the statute must aver and show he used due diligence to detect the fraud, by setting forth the times and circumstances under which the facts constituting the fraud came to his knowledge, so that the court may determine from the allegations of the complaint whether the discovery was made within the period, and if he had the means of discovery in his power he will be held to have known it.

"Discovery" and "knowledge" are not *convertible* terms, and whether there has been a proper allegation as to a "discovery" of the facts constituting the fraud within the meaning of the statute of limitations is a question of law to be determined by the court from the facts pleaded".

Defendant's Right to Have Judgment Entered Under Section 60B.

Section 60B of the new Rules of Federal Procedure really places upon the statute what previously was a rule in California since Rule 60B was based upon the California Code of Civil Procedure, Section 473. Moore on Federal Procedure, Section 3279, in discussing Rule 60B states:

"As to what types of situation will justify relief under Rule 60B, there is little federal precedent since the subdivision is taken from California practice. Rule changed so as to more nearly conform to the wording of the analogous provision of the California Code of Civil Procedure which has worked very well in California practice. The California Statute has been construed to cover relief from judgments taken against party through accident, and fraud. This construction is in keeping with California Decision holding that their code provision is remedial and should, therefore, be liberally construed."

All of the California cases as pointed out above provide for a liberal construction of this section with the object in mind of giving a defendant who appears to have a meritorious defense a chance to have the case tried upon its merits. See

Simkins Federal Practice 3rd Ed. Sec. 1134 Page 820 to 827.
Ohlinger Fed. Practice Vol. 3 P. 810.
Daniels v. Calkins 201 Cal. 10.
Waite v. So. Pacific Co. 192 Cal. 467.
Nuckolls v. Bank of Calif. 10 Cal. (2) 266.

The defense of the statute of limitations in addition to the defenses hereinabove set forth are meritorious defenses. See

Lilly-Brackett Co. v. Sonnemann, 157 Cal. 192,

quoting from p. 196 where the rule is stated:

"The sole question, then, is whether a plea of the statute of limitations is an answer to the merits. The point is one that has come before the courts of various states, and while the earlier cases showed a tendency to hold that such a plea is merely technical, and should not be permitted to a

defendant who has been in default (citing cases) the decided weight of authority, and particularly of modern authority, supports the view that the statute of limitations is to be viewed as a statute of repose, and, as such, is a meritorious defense which may with propriety be set up after a default has been vacated."

Also in the case of

Wood vs. Carpenter, 101 U. S. 135,

the Supreme Court of the United States states the rule:

"*Statute* of limitations are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of jurisprudence. They promote repose by giving security and stability to human affairs; important public policy lies at their foundation; they stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary."

Shain vs. Sresovich, 104 Cal. 406;
Nichols vs. Randall, 136 Cal. 432;
Guaranty vs. U. S., 304 I. S, 126;
Flack vs. Boland, 11 Cal. (2d) 106.

Judgment is Void Under Section 67d of the Bankruptcy Act as Amended.

The affidavit of P. M. Jackson shows that Leonard Woodruff was adjudicated a bankrupt on July 5, 1939. Section (2) of subdivision d provides:

"Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition in bankruptcy . . . . or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction".

Subdivision (6):

"A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this Act, which is fraudulent under this subdivision d against creditors of such debtor having claims provable under this Act, shall be null and void against the trustee . . . . ."

In 4 Fed. (2d) 269 the rule is stated:

"A transfer is defined to be not only the sale of property, but every other and different mode of disposing of or parting with property. All technicality and narrowness of meaning is precluded, ... and is intended to include every means and manner by which property can pass and by which results forbidden by statute may be accomplished."

In Re Salmon, 38 Am. B. R., 692, 694, the rule is stated:

"That the payment results in diminishing the fund available to other creditors is obvious, since by hypothesis the debtor who is insolvent, receives no new consideration. If in addition he knows of his inevitable insolvency, he knows that this result must follow, and he intends it, though it may not be his actuating motive. But it is argued that though the payment defeats pro tanto his other creditors, it is only for the benefit of another creditor, who should be still recognized as such in spite of his debt's being subject to a complete defense.

Yet, even if one preserves the most orthodox theory and regards the debt as still existing, subject to its defense, a theory full of vicious casuistry, the defense to the debt still remains a valuable right, which will pass to the bankrupt's creditors. The whole presupposition of the rules against fraudulent conveyances is that from the time a debtor knows that he is insolvent he holds all his property subject to the interests of his creditors. While he may continue its management in the genuine interest of both them and himself, he loses all right to diminish its value to them. Certainly there is no reason why his disability should not extend to the destruction of any defense he may have to an otherwise valid claim. It is true that the defense of the Statute of Limitations has at all times been called unconscionable, but that view does not now prevail, nor is there the least reason

in policy why it should. The case at bar is a good instance of the injustice of treating the defense of the statute as different from any other defense, since a debt like this, outlawed by more than three times the statutory period, cannot in the nature of things have been expected by the parties to continue as an obligation with the usual coercive sanctions. By the time of the bankruptcy it was certainly meant only as a moral obligation, and it would be highly unjust now to allow it by a mere device to reassume its place among other debts which were supposed to have all the sanctions of law.

In this aspect it is unnecessary to consider whether or not the creditor, Hamilton H. Salmon, was put on inquiry as to the bankrupt's insolvency, the distinction taken in Re Bank, supra, because the question is only whether the bankrupt may *gratuitiously* destroy a part of his estate, i. e., a valid defense, in the interest of a third person, and to the prejudice of his creditors. The case is analogous to a voluntary transfer in fraud of creditors, where it is never necessary to show that the transferee had notice. Young v. Herrmans, 66 N. Y., 374; Beecher v. Clark, 12 Blatch. 256."

Defendant respectfully submits that a gross injustice will be done to the other creditors if the judgment in the above entitled matter is permitted to stand, where the trustee and creditors are unable to defend the matter on the merits, and where their answer and the affidavits show that they have a good and sufficient defense.

Respectfully submitted.

COBB, CAMPBELL & KELLEY
By FRANCIS B. COBB,
Attorneys for defendant M. P. Jackson, Trustee in Bankruptcy for Leonard Woodruff, and for Leonard Woodruff.

[Exhibit C to the affidavit of Francis B. Cobb in support of motion to set aside judgment, reporter's transcript of argument on motion to vacate judgment and set aside default, is identical with objectors' exhibit CC, which appears at page 987.]

[Objectors' exhibit 5, certified copy of appellants' opening brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit EE. The designated portions of objectors' exhibit EE appear at page 1014.]

[Objectors' exhibit 6, certified copy of appellee's brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit FF. The designated portions of objectors' exhibit FF appear at page 1015.]

[Objectors' exhibit 7, certified copy of appellants' closing brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit GG. The designated portions of objectors' exhibit GG appear at page 1015.]

[Objectors' exhibit 8, certified copy of transcript of record, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit DD. The designated portions of objectors' exhibit DD appear at page 1013.]

[Transcript of Proceedings.]

Willie Mae Woodruff Claim.

Hon. Geo. F. Clark, Referee in Bankruptcy.

Ardmore, Oklahoma, Nov. 18, 1940; Nov. 19, 1940; Nov. 20, 1940; Nov. 22, 1940.

258 Appearances: W. W. Potter, Ardmore, Oklahoma, Attorney for Willie Mae Woodruff; Rupert Beach Turnbull, Los Angeles, Calif., Attorney for M. E. Heiser.

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259 (This transcript concerns the claim of Willie Mae Woodruff in this estate only and some exhibits were introduced, being 1 to 80. The claim of Mrs. Willie Mae Woodruff being Exhibit No. 6; same being with the original files in this case, the other exhibits, 1 to 80 (except No. 6) being transmitted herewith to Judge Geo. F. Clark, Referee in Bankruptcy) (O. E. English, Reporter.)

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260 Now on this the 18th day of November, 1940, came on to be heard in the above styled and numbered cause the matter for the approval or the rejection of claims filed in the above entitled estate, after which the following proceedings were had herein:

By Mr. Potter: If the Court please, regarding the Willie Mae Woodruff claim would it be possible to get the original exhibits?

By the Court: Yes, I will go and get them now.

(Whereupon the original claim herein was procured.)

By Mr. Potter: If the Court please at this time we would like to offer some proof regarding the claim of Willie Mae Woodruff.

By the Court: All right, proceed.

261 WILLIE MAE WOODRUFF, being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct Examination.

By Mr. Potter:

Q. Will you state your name?.

A. Willie Mae Woodruff.

Q. Are you the wife of Leonard J. Woodruff, the Bankrupt?

A. Yes sir.

Q. When were you married?

A. The 2nd day of May, 1914.

Q. Subsequent to that time did Mr. Woodruff give you any property located in Carter County, Oklahoma?

A. Yes sir.
Q. When did he do that, Mrs. Woodruff?
A. It was in 1919.
Q. Did he give you a Warranty Deed to this property?
A. Yes, sir, he did.

By Mr. Turnbull: If the Court please, we object to that as not the best evidence and calls for a conclusion of the witness and we ask that the answer be stricken subject to the ruling on the objection.

By the Court: Sustain the objection.

By Mr. Potter:

Q. Did he deliver to you an instrument evidencing the transfer of this property?
A. Yes, sir.
Q. Do you have the instrument with you?
A. Yes, sir, I do.

Q. The instrument which I have had marked as
262 the Willie Mae Woodruff Exhibit "1" and now Mrs. Woodruff, I hand you an instrument which has been marked for identification as Willie Mae Woodruff's Exhibit "1" and I will ask you what that instrument is.

By Mr. Turnbull: We object to that as a conclusion of the witness. I make no objection to the instrument but I object to the witness telling what the instrument is.

By Mr. Potter: If the Court please, I believe the witness has a right to state what the instrument purports to be.

By Mr. Turnbull: It is acknowledged and recorded and I stipulate that that is Mr. Woodruff's signature on it but I object to this witness giving her opinion as to what the instrument is or what it purports to be.

By Mr. Potter:

Q. Do you know what this instrument is?

By the Court: Go ahead, overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Potter: What is it?

A. It is a deed to certain property.

Q. Was there an oil and gas lease on that property when it was deeded to you in 1919?

By Mr. Turnbull: We object to that as calling for an opinion and a legal conclusion of the witness as to real estate and if there is such an instrument I will be glad to stipulate with counsel as to the instrument.

263 By Mr. Potter: If she knows whether or not there was an oil and gas lease on the property she should be allowed to answer.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Potter:

Q. Was there?

A. No, sir.

Q. Was there subsequently placed on the property an oil and gas lease?

By Mr. Turnbull: We object to that as calling for a conclusion of the witness and it must be in writing and I have had no opportunity to examine the instrument and it is invading the province of the Court as to whether an oil and gas lease was given on the property.

By Mr. Potter: If the Court please, I do not think that would be hearsay evidence or a conclusion, I can bring the records up here of course, but I merely asked if there was an oil and gas lease on it and when the witness answered there was not then I asked was there one subsequently placed on the property after she acquired it.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

264 By Mr. Potter:

Q. Was there such an instrument placed on the property?

A. Yes, sir.

Q. Did you sell that lease yourself?

A. Yes, sir.

Q. Did you receive the runs for the payment of the oil and gas produced from this property?

A. Yes.

Q. Was the property developed for oil and gas under the lease which you sold?

A. Yes, sir.

Q. And to whom did you sell the lease?

A. To the Carter Oil Company.

Q. And the property was developed under that lease?

A. Yes, sir.

Q. Pursuant to that development did you receive any money for the production of oil and gas on the property?

A. Yes, sir.

Q. How did you receive that money?

A. In the way of checks from the Carter Oil Company made to me.

Q. What did you do with those checks?

A. They were deposited in the bank.

Q. To whose credit?

A. Willie Mae Woodruff's credit.

Q. Have you had occasion to ascertain how much money the Carter Oil Company paid you over a period of weeks or years?

A. Yes, sir.

Q. Did you obtain a statement from the Carter Oil
265 Company showing the amount of runs from this property?

A. Yes, sir.

Q. What did that statement show that you had been paid?

By Mr. Turnbull: We object to that, that is hearsay pure and simple.

By the Court: Sustain the objection.

By Mr. Turnbull: I don't want to be technical but I want to know as to that.

By Mr. Potter:

Q. You did have occasion to request the Carter Oil Company for a statement as to the money paid to you under this lease?

A. Yes, sir.

Q. Did you receive such a statement from the Carter Oil Company?

A. Yes, sir. I did.

Q. I have had that statement marked as Willie Mae Woodruff's Exhibit "2" and I hand you that instrument and I will ask you to state what that is.

A. It is the oil runs from my oil lease for 1920 to 1930.

Q. Is that the statement furnished to you by the Carter Oil Company upon your request?

A. It is.

Q. And is this the same property covered by the deed?

A. Yes, sir.

By Mr. Potter: If the Court please, we offer Exhibits "1" and "2" in evidence.

By the Court: Very well, let them be introduced.

By Mr. Potter:

Q. When that money began to come in to you what
266 disposition did you make of it if any?

A. I asked Mr. Woodruff to invest it for me and I did not know anything about business and he said he would.

Q. Pursuant to that agreement did you continue to deliver him money for the purpose of investing it for you?

A. Yes, sir.

Q. Just what was the agreement?

A. That he was to take this money that was received from my property and invest it in some good bond or bonds and he was not to speculate on it in the least.

Q. Did you specifically advise him as to what it should be invested in?

A. Yes, sir, put it in good bonds and not speculate in it.

Q. Did you continue to deliver him money over a period of years to invest for you?

A. Yes, sir.

Q. You did continue to deliver money to him for that purpose?

A. I did.

Q. How much money did you receive from this property from 1920 to 1930 inclusive?

A. $760,750.68.

Q. Mrs. Woodruff, I hand you Claimant's Exhibit "3", an instrument which has been marked for identification and I will ask you to state what that is.

By Mr. Turnbull: If the Court please, I will stipulate as to what it is, as to the check, the next instrument, I stipulate the signature of the witness is signed to the check and the check was cashed for its full amount as shown on the face of the check.

267 By Mr. Potter:

Q. I hand you Exhibit "3" and I will ask you to state what that purports to be.

By Mr. Turnbull: I object to what it purports to be.

By Mr. Potter:

Q. What is it?

By Mr. Turnbull: That is invading the province of the Court to determine what it is.

By Mr. Potter: It is a bill for 5,000 U. S. Government Third Liberty Loan four and a halves price eighty-eight and three-quarters amounting to $4484.25.

By Mr. Turnbull: I stipulate that the instrument is genuine and it shows for itself what it is.

By Mr. Potter: And on the bottom of this instrument, if the Court please, it says, "Bought for Willie Mae Woodruff, paid for out of her personal account," and it is signed "Leonard Woodruff", and it also says "Sold at 86.48".

Q. Will you tell the Court whether or not you know whose handwriting appears to be on the bottom of that bill or statement?

A. Leonard Woodruff's.

Q. You know Mr. Woodruff's handwriting?

A. I do.

Q. And it shows that was bought with your money and out of your personal funds?

A. Yes, sir.

268 By Mr. Turnbull: We object to that, that is invading the province of the Court and substituting the word of the witness for the bill.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibit "4", being a check dated May 13th, 1920, on the First National Bank of Los Angeles, pay to the order of Drake, Riley & Thomas $4484.25, and signed by Willie Mae Woodruff and endorsed on the back by Drake, Riley & Thomas and the check has been stenciled paid. I now ask that the instrument which I hand the Reporter be marked as Willie Mae Woodruff's Exhibit "5".

By Mr. Turnbull: This instrument which counsel has marked for identification as Exhibit "5", is a check of Willie Mae Woodruff duly drawn on the First National Bank of Los Angeles, California, in the sum of $25,000.00 and endorsed on the back by Leonard Woodruff, and we will say that that is his genuine signature.

By Mr. Potter:

Q. I hand you Exhibit "5" and I will ask you if the $25,000.00 evidenced by that draft or check was delivered to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose Mrs. Woodruff?

A. For the purpose of buying bonds.

269 Q. Do you know whether or not he bought stock or bonds with that money?

A. Yes, sir.

Q. Those stocks or bonds ever delivered to you?

A. No, sir.

Q. Were they ever sold and were you ever paid any part of the money?

A. No, sir.

By Mr. Turnbull: The instrument dated July 2nd, 1920, which is a check from Willie Mae Woodruff to Leonard Woodruff for $350.00 bears the signature of the maker and the endorser's signature. Leonard Woodruff is on the back, and it was paid as indicated thereon. I have examined a

great many checks, if the Court please, and I offer to enter into this stipulation as he produces the checks in each case when the signature is Willie Mae Woodruff, when she is the maker of the check and Leonard Woodruff has endorsed the check, in all such cases, and if I do not make an additional objection they may be introduced without further objection. This is in each instance whether it is by rubber stamp or original endorsement and where the check is made to Drake, Riley & Thomas the same stipulation applies, whether the endorsement is by rubber stamp or otherwise, and if I do not raise any other objection they may be introduced
270 in evidence without further objection.

By Mr. Potter: If the Court please, I would like to offer the original claim in evidence by reference as our Exhibit "6".

By the Court: Very well.

Q. Mrs. Woodruff, I have six checks attached together and marked for the purpose of identification as Willie Mae Woodruff's Exhibit "7", counsel has agreed that the signature on those checks are yours and the endorsement thereon is the signature of Leonard Woodruff, I would like to ask you whose handwriting filled the checks out.

A. Leonard Woodruff.

Q. Those checks were delivered by you to Mr. Leonard Woodruff?

A. Yes, sir, they were.

Q. For what purpose?

By Mr. Turnbull: They are all in 1920 are they counsel?

By Mr. Potter: Yes, sir, they are.

A. The check of October 25th, 1920, for $2376.00 was filled out in its entirety by me I believe and delivered to Mr. Woodruff, yes, that is right.

By Mr. Potter:

Q. And the other checks were filled out by Mr. Woodruff?

A. Yes, sir.

Q. And delivered to Mr. Woodruff?

A. Yes, sir.

Q. For what purpose Mrs. Woodruff?
A. To buy bonds.
Q. To buy bonds for you?
271 A. Yes, sir.

By Mr. Turnbull: Counsel shows me a check dated July 12th, 1920, for $8657.47. I will stipulate that is the signature of Willie Mae Woodruff signed to the check, the check is made payable to Drake, Riley & Thomas and counsel stipulates that Drake, Riley & Thomas were stock brokers in Los Angeles, California, at that time:

By Mr. Potter:

Q. I hand you a check that has been marked as Willie Mae Woodruff's Exhibit "8" and a bill from Drake, Riley & Thomas which has been marked as Willie Mae Woodruff's Exhibit "8-A", I will ask you if there is any writing on the bottom of that bill from Drake, Riley & Thomas.
A. Yes, sir.
Q. Do you know whose handwriting that is?
A. Yes, sir, it is Leonard Woodruff's handwriting.
Q. The exhibit bears at the bottom in the handwriting of Leonard Woodruff these words, "Bought for Willie Mae Woodruff, paid for out of her personal acct. Leonard Woodruff."

By Mr. Turnbull: To which I object, if he is offering it all right but if he is reading it before it is offered I object.

By Mr. Potter: If the Court please, I offer Willie Mae Woodruff's Exhibit "8" and "8-A" in evidence.

By Mr. Turnbull: There is no objection to Exhibit "8", but as to "8-A", I object to it for the reason there is
272 handwriting on it that is a statement of fact, purports to be a statement within itself, if Mr. Woodruff is here and will testify to it as to being his handwriting, that is one thing, but this witness cannot testify to it. It is not any evidence as against creditors and there is no testimony here as to when it was put on there.

By the Court: I will sustain the objection.

By Mr. Potter: That was offered together with Exhibit "8", if the Court please.

Q. Mrs. Woodruff, I again show you the instrument which has been marked as Willie Mae Woodruff's Exhibit "8-A" and I will ask you if that instrument was ever delivered to you by Mr. Woodruff?

A. No, it was not.

By the Court: I sustain the objection to Exhibit "8-A".

By Mr. Potter: Your Honor rules that this bill is not admissible at this time?

By the Court: Yes, I do.

By Mr. Potter: We would like to offer proof on it later.

By Mr. Turnbull: Do you expect to have Mr. Woodruff available?

By Mr. Potter: Yes, sir, we do.

By Mr. Turnbull: Very well.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument which has been marked as Willie Mae Woodruff's Exhibit "9", I will ask you to state what it is.

273 By Mr. Turnbull: If the Court please, I will stipulate as to all signatures thereon, the signature of the maker and the endorser.

By Mr. Potter:

Q. Was that check filled out by you?
A. No, it was not.
Q. Who did fill it out?
A. Leonard Woodruff.
Q. Was it delivered to Leonard Woodruff by you?
A. Yes, sir.
Q. Signed by you?
A. Yes, sir.
Q. For what purpose?
A. To buy bonds for me.
Q. Did you ever receive the bonds?
A. No, sir.
Q. Or any of the proceeds from the sale of the bonds?
A. No, sir.

Q. Claimant's Exhibit "10", and it has been stipulated that the signature is genuine and the endorsements are regular and attached to it is a bill marked Claimant's Exhibit "10-A" from Drake, Riley & Thomas showing the bonds issued to Leonard Woodruff in the sum of $3,000.00, and the check of Mrs. Woodruff in the sum of $2,452.92 in payment therefor, that is your signature?

A. Yes, sir.

By Mr. Potter: We offer in evidence Mrs. Woodruff's Exhibit "10" and "10-A", if the Court please.

By the Court: All right.

274 Q. Mrs. Woodruff, I show you what is marked for identification as Exhibit "11", and I will ask you if you know whose signature, whose handwriting filled out that check.

A. Leonard Woodruff's.

Q. That check is filled out, was filled out at the time you signed it?

A. I often signed a blank check and he would fill them out, I would not say.

Q. Look at Exhibit "11-A", that is thereto attached, and the writing on the bottom of that exhibit, you know whose handwriting that is?

A. Leonard Woodruff's.

Q. You know when that was put on there?

A. No, I don't know.

Q. Were those bonds, they appear to have been issued in Leonard Woodruff's name and paid for by you, were those bonds ever delivered to you?

A. No, sir.

Q. Or the proceeds therefrom?

A. No, sir.

By Mr. Potter: We offer the exhibit in evidence, if the Court please.

By the Court: Very well.

By Mr. Potter:

Q. I hand you Claimant's Exhibit "12", you know who filled out that check?

A. Leonard Woodruff.
Q. That is your signature on the bottom?
A. Yes, sir.
Q. That was charged to your account?
A. Yes, sir.
275 Q. And paid for bonds evidenced thereby on Exhibit "12-A", sold to Leonard Woodruff?
A. Yes, sir.
Q. Were those bonds ever delivered to you?
A. No, sir.
Q. Or the proceeds of the sale of the bonds or the bonds, were they ever delivered to you?
A. No, sir.
Q. The notation on the bottom of the receipt, in whose handwriting is that notation?
A. Leonard Woodruff.
Q. Do you know when that was placed there?
A. No, I do not.

By Mr. Potter: We offer Exhibit "12" in evidence, if the Court please.

By the Court: Very well.

By Mr. Potter:

Q. I hand you Exhibit No. "13" and I will ask you who filled out that check.
A. Leonard Woodruff.
Q. Is that your signature on the bottom?
A. Yes, sir.
Q. Was that check charged to your account?
A. Yes, sir.
Q. And it was issued for the purpose of buying bonds evidenced by the receipt marked Exhibit "13-A"?
A. Yes, sir.
Q. Were those bonds issued to Leonard Woodruff?
A. Yes, sir.
Q. Were they ever delivered to you?
276 A. No, sir.
Q. Ever transferred to you?
A. No, sir.

Q. I notice on the bottom of the receipt some handwriting, who wrote that?

A. Leonard Woodruff.

Q. You notice on the receipt where it says sold, were the proceeds of the bonds ever delivered to you?

A. No, sir.

Q. Did you sell the bonds?

A. No, sir, I did not.

By Mr. Potter: We offer Exhibit "13" in evidence.

By the Court: All right.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Claimant's Exhibit No. "14", who filled out that check, if you know?

A. Leonard Woodruff.

Q. That check is drawn against your account, is it?

A. Yes, sir.

Q. And paid by you?

A. Yes, sir.

Q. In payment of bonds as evidenced by Exhibit "14-A"?

A. Yes, sir.

Q. Issued in Leonard Woodruff's name?

A. Yes, sir.

Q. You notice that pencil notation on the bottom of the statement, in whose handwriting is that?

A. Leonard Woodruff.

Q. Did you ever receive the bonds?

277 A. No, sir.

Q. Or the proceeds from the sale of the bonds?

A. No, sir.

By Mr. Potter: We offer in evidence Claimant's Exhibit "14" if the Court please.

By the Court: All right, let them go in, let all the exhibits go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit "15"—

By Mr. Turnbull: If the Court please, counsel stipulates that the check for $15,980.63 in favor of Drake, Riley

& Thomas, I will stipulate there is such a check and that it was endorsed by Drake, Riley & Thomas, dated September 13th, 1920, and stipulated the money was paid to Drake, Riley & Thomas as indicated by the check.

By Mr. Potter: And charged to the account of Mrs. Woodruff.

By Mr. Turnbull: Yes, sir, I stipulate as to that. As to Exhibit No. "16" which is a statement dated February 4, 1921, two months later, is a statement issued by Drake, Riley & Thomas under date of February 4, 1921, and it shows a list of stocks and bonds sold to Leonard Woodruff.

By Mr. Potter: And that the bonds that were sold were credited to the account of Leonard Woodruff.

By Mr. Turnbull: I stipulate as to the list of stocks and bonds bought for the account of Leonard Wood-
278 ruff, yes, sir, and under the item of credit there appears an item of $15,980.63 under the date of December 13th, by cash, and I will stipulate that the check marked Exhibit "15" is the credit as shown on this list.

By Mr. Potter: I desire that the exhibits go in evidence otherwise the stipulation is not understandable and I offer in evidence Exhibits "15" and "16".

By the Court: All right.

By Mr. Turnbull: Counsel hands me a draft signed by Willie Mae Woodruff in favor of Drake, Riley & Thomas, endorsed by Drake Riley & Thomas and it says to First National Bank, Los Angeles, and is in the sum of $9,149.46. I will stipulate the signature is that of Willie Mae Woodruff and that it was signed on the date it bears, which was April 12th, 1920, and that amount of money; $9,149.46 is the same money shown on the bill of April 10th, 1920, marked paid 4-12-1920, Drake, Riley & Thomas; the draft to be marked Willie Mae Woodruff's Exhibit "17" and the bill and receipt as Exhibit "17-A". As to two other drafts I will stipulate that the check dated April 16th, 1920, for $8,691.68 is a check made by Willie Mae Woodruff and that this is her

signature thereon, that the check is made to Drake,
279 Riley & Thomas and is endorsed by them, and that they received the money as evidenced by said check and the instrument attached thereto dated April 15th, 1920 is a receipt issued to Leonard Woodruff marked paid April 16th, 1920, for the same amount of money, $8,691.68, in other words it is the receipt for that money as shown by the receipt.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check that has been marked as Claimant's Exhibit "17" and attached thereto is a bill marked "17-A" with handwriting across it, in whose handwriting is that?

A. Leonard Woodruff.

Q. The word "Sold" there written in Leonard Woodruff's handwriting?

A. Yes, sir.

Q. The bonds were issued to Leonard Woodruff?

A. They were.

Q. And paid for with your money?

A. Yes, sir.

Q. You know if you ever received the proceeds from the sale of the bonds?

A. No, sir, I never did.

By Mr. Potter: We would like if counsel would stipulate at this time as to the writing on the bottom of these
280 statements, as to whether or not it is in the handwriting of Leonard Woodruff.

By Mr. Turnbull: I cannot do that at this time. I have stipulated that these checks were signed by Willie Mae Woodruff and charged to her account.

By Mr. Potter:

Q. And these bonds sold for $84.36?

A. Yes, sir.

By Mr. Turnbull: Does counsel contend that these notations were made on these receipts at about the time the receipts were made?

By Mr. Potter: Yes, sir, they were.

By Mr. Turnbull: In each instance where we have a receipt from Drake, Riley & Thomas and their stamp on it paid on this bill, we do stipulate that the notation and handwriting over the signature of Leonard Woodruff was placed there at or about the date of the receipt.

By Mr. Potter: All right, that is agreed to, if the Court please.

By Mr. Turnbull: That is a stipulation with counsel, is it?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has asked me to stipulate that the Security First National Bank of Los Angeles in 1920 or '21 or '22 was a separate corporation from the First National Bank of Los Angeles. That the First National Bank of Los Angeles was a National Bank organized
281 as a National Banking Corporation and the Security First National Bank was an independent corporation owned by the stockholders of the First National Bank of Los Angeles and handled securities for it.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check marked for identification as Exhibit "19" and I will ask you if that is your signature on that check.

A. Yes, sir.

Q. In whose handwriting is the check filled out?

A. In Leonard Woodruff's handwriting.

Q. You delivered that check to Mr. Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds?

A. No, sir.

Q. Did you receive the proceeds after the bonds were sold?

A. No, sir.

By Mr. Turnbull: What is the date of the check?

A. It is June 8, 1920.

By Mr. Turnbull: And the number?

By Mr. Potter: "19", we offer in evidence, if the Court please.

By the Court: All right, let it go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked for identification as Claimant's Exhibit "20", is that a
282 bill from Drake, Riley & Thomas?

A. Yes, sir.

Q. The bill receipted paid?

A. Yes, sir.

Q. I will ask you if there is any handwriting on the bottom of that bill.

A. Yes, sir.

Q. In whose handwriting is it?

A. Leonard Woodruff's.

Q. You know it is in Leonard Woodruff's handwriting?

A. Yes, sir.

Q. And that is his signature at the bottom?

A. Yes, sir, it is.

By Mr. Turnbull: We stipulate that the handwriting and the signature is that of Leonard Woodruff's and that the reading "Bought for Willie Mae Woodruff, paid out of her personal account" and that it was signed by Leonard Woodruff, and that notation was made about the time this bill was made out and stamped paid which was July 22nd, 1920.

By Mr. Potter: All right.

Q. Mrs. Woodruff, I hand you a check which has been marked for identification as Claimant's Exhibit "21", is that your check?

A. Yes, sir.

Q. Drawn in Leonard Woodruff's favor?

A. Yes, sir.

Q. And delivered to Leonard Woodruff?

A. Yes, sir.

283 Q. For what purpose please?

A. To buy bonds.

Q. And it is in what amount?

A. $350.00.

By Mr. Potter: Any objection to it?

By Mr. Turnbull: No objection.

By the Court: All right, let it go in.

By Mr. Potter: Mrs. Woodruff, I hand you an instrument which has been marked Claimant's Exhibit "22" and I will ask you what that transaction, what transaction that evidences.

By Mr. Turnbull: We object to that on the ground the instrument is not made by the witness, her signature is not on it and it purports to be made by someone by the name of Davis.

By Mr. Potter: I will withdraw that question.

Q. Mrs. Woodruff, is that a draft drawn against your account?

A. Yes, sir.

Q. For what amount?

By Mr. Turnbull: That calls for a conclusion of the witness, if it is a draft on her account it will show it was and for the amount paid, it doesn't show to be paid to anyone.

Q. Do you know a man by the name of William Davis whose name is signed to this instrument?

A. No, sir.

Q. Did you ever talk to him?

A. No, I don't think so.

284 Q. Did you ever talk to Mr. Davis?

A. No, sir.

Q. Were you in Los Angeles January 3rd, 1931, when that instrument was signed?

A. I can't answer that.

Q. Were you present when it was signed?

A. I don't know.

Q. Where did you get the paper?

A. From the records.
Q. From your records?
A. Yes, sir.
Q. The instrument purports to be a receipt for money in the sum of $5,001.20.
A. I think it was borrowed from my account or brought from my account some place.
Q. Have you got a receipt — this is a receipt for the money, you know how it was transferred?
A. It was transferred in the bank.
Q. Where were you in 1921?
A. I don't remember,
Q. This instrument only purports to be a receipt for money. This instrument does say the amount or the money was sent by telegram or telegraph to the credit of Herman Woodruff. I will withdraw my objection. I stipulate that the receipt was signed by William Davis and the money was transferred by telegraph from Ardmore to Los Angeles and placed to the credit of Herman Woodruff.

By Mr. Potter:

Q. All right Mrs. Woodruff, at whose request and whose benefit was that money wired by you?

285 By Mr. Turnbull: We object to that, that is invading the province of the Court and trying to charge that $5,000.00 to Leonard Woodruff. If the document shows it went to Mr. Leonard Woodruff I have no objection, Mr. Potter, Mr. Leonard Woodruff told her to send the money in consideration of—

Q. Just tell the Court about that transaction, Mrs. Woodruff.
A. Mr. Woodruff asked me to wire his brother $5,000.00 who was drilling a well for him at the time and he would give me $5,000.00 worth of bonds in return. Leonard Woodruff was having Herman Woodruff to drill an oil well at the time.
Q. Did you ever receive those bonds?
A. No, sir.

By Mr. Potter: We offer Exhibit "22" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me an acknowledgment by Anderson & Fox of Los Angeles dated the 23rd day of April, 1931, to Leonard Woodruff which reads, "We have this day received the following securities", and then follows the list of securities signed by Anderson & Fox. I will stipulate that instrument was issued on the day it bears and delivered to Leonard Woodruff. Counsel will you stipulate that Anderson & Fox were stock brokers of Los Angeles, California in 1931?

By Mr. Potter: Yes, we do.

286 By Mr. Turnbull: It is so stipulated.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit No. "23".

By the Court: Very well.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument which has been marked for identification as Willie Mae Woodruff's Exhibit No. "24" and I will ask you if that is your signature.

A. Yes, sir.

Q. Who filled that check out, Mrs. Woodruff?

By Mr. Turnbull: What do you mean, fill it out?

By Mr. Potter: That is who did all the handwriting in the check except the signature.

Q. The check is yours?

A. Yes, sir.

Q. And the check is made out to O. A. Slaughter, Anderson & Fox in the sum of $5,000.00?

A. Yes, sir, it is made to Slaughter, Anderson & Fox for $5,000.00.

Q. Is that check filled out in your handwriting?

A. The body of the check, it looks like Leonard's, I am sure it was.

Q. And that check was delivered to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds?

A. No, sir, I did not.

By Mr. Turnbull:

Q. Mrs. Woodruff, does it occur to you that the ink in the body of the check is the same as the signature?

287 A. Yes, sir, it does look like it.

Q. Was it filled out in your presence with O. A. Slaughter, Anderson and Fox's name put in at the time?

A. I don't remember.

Q. You have no independent recollection of it at this time?

A. No, sir.

Q. That was ten years ago?

A. Yes, sir.

Q. Did you know who Slaughter, Anderson and Fox were?

A. Stock brokers.

Q. When you signed the check you knew it was to be for $5,000.00?

A. I knew it was to be for bonds, I did not know the amount.

By Mr. Turnbull: The check we have just examined the witness about is dated May 16th, 1931, is marked for identification as Exhibit No. "24".

By Mr. Potter:

Q. Mrs. Woodruff, I will ask you if you ever received any proceeds from the sale or transfer of 165 shares of stock of the Security Corporation of Los Angeles.

A. No, sir.

By Mr. Turnbull: I will stipulate that the instrument marked as Exhibit No. "25" that the signature is the signature of A. O. Slaughter, Anderson and Fox by O. E. Davidson and that it is addressed to Mr. Leonard Woodruff and may be offered in evidence as Exhibit "25".

288 By Mr. Potter:

Q. Mrs. Woodruff, did you ever receive 165 shares of stock in the First National Bank of Los Angeles?

A. No, sir.

Q. Or any other amount from the sale of stock?

A. No, sir.

By Mr. Potter: We offer Willie Mae Woodruff's Exhibit No. "25" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me an instrument marked Willie Mae Woodruff's Exhibit No. "26" and I will stipulate that it is a duplicate yellow sheet of a receipt from the First National Bank of Los Angeles by the collection teller whose initials are placed thereon and it says, "Received of Willie Mae Woodruff the following described items, State of Utah, Salt Lake City, Utah, 5 bonds at $5,000.00 each, Nos. 71-2-3-4-5, amount $25,000.00," and the number of the receipt is stamped 22,885 in red, and the only date on it is 12-31 and I take it that means the year 1931 and the month of December.

By Mr. Potter:

Q. Did you ever receive anything in payment for those bonds?

A. No, sir.

Q. Were those bonds, Mrs. Woodruff, did you ever receive the money from the sale of those bonds?

A. No, sir.

289 Q. And the bonds were not delivered to you?

A. No, sir.

By Mr. Turnbull: I merely stipulated as to what the instrument is, what it shows.

By Mr. Potter:

Q. Is that Leonard Woodruff's signature?

A. Yes, sir.

By Mr. Potter: If the Court please, I am just trying to show she did not receive the money from the sale of the bonds and I am just proving she did not receive the money. We offer the exhibit in evidence.

By the Court: Very well.

By Mr. Turnbull: Counsel has handed me an exhibit marked Willie Mae Woodruff's Exhibit No. "27" which is a check of June 1st, 1931, for $2500.00 payable to Slaughter,

Anderson and Fox and I make the same stipulation as to the signature as I did on the receipt heretofore and on the receipt of Anderson and Fox attached to the check marked Exhibit "27". The receipt is numbered 16,044 being receipt in writing and it says, "Received of Leonard Woodruff, Seventy Five Hundred and No/100 Dollars on account," and it is marked further down, "Check 16-4 Willie Mae Woodruff" and I stipulate the check referred to in the receipt is the check marked Exhibit "27" and dated June 1st, 1931, and that the check was properly presented and paid at the bank.

290 By Mr. Potter:

Q. I hand you what has been marked as Willie Mae Woodruff's Exhibit "27", is that your check?

A. Yes, sir.

Q. Payable to Slaughter, Anderson and Fox?

A. Yes, sir.

Q. And attached thereto is a receipt for that check in favor of Leonard Woodruff, signed by Anderson and Fox?

A. Yes, sir.

Q. Was that check delivered by you to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive any bonds in consideration for the issuance of this check?

A. No, sir.

Q. You never received the proceeds from the bonds?

A. No, sir.

By the Court: Gentlemen, it is now 12:00 o'clock and we are going to recess until 1:30, at which time you will all be back.

(Whereupon Court recessed until the hour of 1:30 this day.)

291 Thereafter and on the 18th day of November, 1940, the above styled and numbered cause came on for further hearing before the Hon. George Clark, Referee in Bankruptcy, the parties hereto being present as heretofore, and it being now the hour of 1:30 P. M., Court met pursuant

to recess taken for the noon hour when the following proceedings were had herein:

WILLIE MAE WOODRUFF resumed the witness stand and having been duly sworn as heretofore shown, testified as follows:

By Mr. Potter:

Q. You are the same Mrs. Woodruff who was on the witness stand this morning?

A. Yes, sir.

Q. I hand you a check which has been marked Willie Mae Woodruff's Exhibit No. "28" and I will ask you if that is your check and was it drawn against your account?

A. Yes, sir.

By Mr. Turnbull: I have stipulated as to the signature on all of these checks and the endorsement on the check is the Security First National Bank of Los Angeles and Slaughter, Anderson and Fox, they are the endorsers on all of these checks made to this particular Company or party, and may be introduced in evidence without a further objection is made.

By Mr. Potter:

Q. I hand you Exhibit No. "28-A", it appears this $5,000.00 was credited to the account of Leonard Woodruff, did you deliver the check to Leonard Woodruff?

292 A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever get any bonds for this amount?

A. No.

By Mr. Turnbull: That check is made to Slaughter, Anderson and Fox?

By Mr. Potter: Yes, sir.

We offer in evidence Willie Mae Woodruff's Exhibit No. "28" and "28-A".

By the Court: Let them be admitted

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check for $12,500.00 marked as your Exhibit No. "29", did you deliver that check to Leonard Woodruff?

A. I did.

Q. Did you fill that check out, it is filled out to Slaughter, Anderson and Fox, did you fill that out, Mrs. Woodruff?

A. No, Mr. Woodruff did, that is my signature.

Q. And you delivered that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

By Mr. Turnbull: That is payable to Slaughter, Anderson and Fox.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me a receipt of the First Security Company undated but together with a letter from the First Security Company of Los An-
293 geles, dated July 22nd, 1922, and you claim these go together, the receipt appears to be dated in 1923. I will stipulate you may introduce that in evidence together with the signatures of what they purport to be, but I don't think they go together and I stipulate they were issued on or about the date they bear.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit No. "29" and "29-A". We also offer in evidence Willie Mae Woodruff's Exhibit No. "30".

By Mr. Turnbull: It is addressed to Mrs. Willie Mae Woodruff, 262 South Mariposa Ave., Los Angeles, California?

A. Yes, sir.

By Mr. Turnbull: You accept the date it bears as being the true date and the signature to the letter, and it says, "Complying with Mr. Woodruff's instructions, we are today charging your account with the First National Bank of Los Angeles, $14,406.24 being payment in full for 15,000 par value New York Central Railroad refunding and improvement mortgage five percent bonds, due 2,013 at 94½ and accrued interest."

By the Court: All right, let it go in too.

294 By Mr. Potter:

Q. I hand you Willie Mae Woodruff's Exhibit No. "31" and I will ask you to state what that is.

By Mr. Turnbull: I have already entered into a stipulation as to Exhibit "31". I can't stipulate it has anything to do with that letter, they are a year apart.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a letter from the First Security Company, being marked as Willie Mae Woodruff's Exhibit "30" to you for $15,000.00 par value, New York Central Railroad refunding and improvement mortgage, did you ever receive that mortgage or those bonds?

A. No, sir, I never did.

Q. You know who did?

A. I suppose Mr. Woodruff did.

By Mr. Turnbull: I stipulate the First Security Company bought the bonds, that is the receipt for them.

By Mr. Potter: We offer Exhibit "31" in evidence, if the Court please.

By the Court: Let it go in.

By Mr. Turnbull: Willie Mae Woodruff's Exhibit No. "32" has been handed me and I stipulate that is the signature of the witness, Willie Mae Woodruff and that this check or draft shows that it was paid in the sum of $14,000.00 on October 30th, 1923.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "32" and I will ask you if that is your signature?

A. Yes, sir.

295 Q. What was that $14,000.00 for and who did you deliver it to?

A. It came to my account and Mr. Woodruff used it to pay for some of the rentals in Oregon and told me he would give me bonds in exchange for it.

Q. Did you ever get the bonds?

A. No, sir.

By Mr. Potter: We offer Exhibit No. "32" in evidence.

By the Court: Very well.

By Mr. Potter:

Q. I hand you two exhibits, No. "33" and No. "34", is that your signature on both of those exhibits?

A. Yes, sir.

Q. One is a draft for $7500.00 and one for $1500.00, you know who received that money and for what purpose?

A. Leonard Woodruff got the money and he bought cattle with the money and told me he would give me bonds for the use of the money.

Q. Did he ever do that?

A. No, I never did receive the bonds.

Q. Nor did you receive anything in exchange for these two checks?

A. No, sir.

By Mr. Turnbull: They are both dated October 29th, 1923?

By Mr. Potter: Yes, sir.

We offer in evidence Exhibit No. "33" and No. "34".

By the Court: All right, let them go in.

By Mr. Turnbull: Off the record counsel has submitted to me certain documentary evidence that are not originals. I am satisfied there would not be any purpose in re-
296 quiring the originals and I will stipulate that on September 21st, 1922, the First National Bank of Los Angeles, California, sent a telegram by Western Union to Mrs. Willie Mae Woodruff, Casper, Wyoming, reading as follows, "Transferred today, $30,000.00 to credit Leopard Woodruff as requested your telegram", signed First National Bank of Los Angeles, and that that telegram was one of a series which was preceded by a telegram of September 16, 1922, sent by O. H. Schock whom I will *stipulated* was connected with the First Security Company and also connected with the First National Bank of Los Angeles, and that that telegram was sent to Leonard Woodruff, postoffice General Delivery, Spokane, Washington, and it reads, "Can you arrange credit of about 35,000 for your account as

Frank expects call from comptroller any day. Your account over about 33,000 Willie Mae's balance about 26,000, wire collect." And that I will stipulate that in compliance with the first telegram that the witness who is now on the stand authorized the transfer from her bank account at Los Angeles in California to the account of Leonard Woodruff, the sum of $30,000.00 on the 21st day of September 1922, and that the funds were actually transferred from the account of the witness on the stand in that bank to the credit of Leonard Woodruff for which the First National Bank of Los Angeles issued its receipt to Willie Mae Woodruff which counsel has presented. The first telegram may be considered in evidence as Willie Mae Woodruff's Exhibit No. "35" and the other as Exhibit No. "36" and the receipt held by this witness, Willie Mae Woodruff dated September 21st, 1922, as Exhibit, No. "37".

297

By Mr. Potter:

Q. You just heard the stipulation?

A. Yes, sir.

Q. What were you to receive in connection for the $30,000.00?

By Mr. Turnbull: What were you to receive, that is objectionable.

By Mr. Potter:

Q. Did you have any conversation with Mr. Woodruff just prior to transferring this money from your account to his account in the bank?

A. Yes, sir.

Q. What was he to give to you in return for this transfer of this money, what was the conversation?

A. That he needed this money to cover his overdraft and he would give me bonds in return for the transfer.

298

Q. Did you agree to that?

A. Yes, sir.

Q. Did you receive any bonds in consideration of this $30,000.00?

A. No, sir.

Q. Have you ever?

A. No, sir.

By Mr. Turnbull: The instrument counsel now hands me is on the letterhead of the First Security Company addressed to Mrs. Willie Mae Woodruff, February 24th, 1922, and is signed by the First Security Company by W. A. Pike, and was sent in the ordinary course of mail and delivered to the witness on the date it bears.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a letter marked for identification as Willie Mae Woodruff's Exhibit No. "38" from the First Security Company, advising you that $14,000.00 par value Chicago, Burlington & Quincy Railway Company first and refunding mortgages 5's due 2-1-71 and on the bottom of that instrument it says, "Paid and delivered March 4th," whose handwriting is that in?

A. The part at the bottom "paid and delivered March 4th," is in Leonard Woodruff's handwriting.

Q. Did you ever receive those bonds?

A. No, sir.

Q. Did you ever receive any proceeds from the sale of those bonds?

A. No, sir.

By Mr. Turnbull: It is understood that these instruments are in evidence?

299 By the Court: Yes, they are.

By Mr. Turnbull: When you accept my stipulation it is understood they are going in evidence.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me ten checks each of them signed as maker by the witness on the stand, Willie Mae Woodruff, each in favor of Leonard Woodruff, payee and endorsed Leonard Woodruff, and I stipulate and agree that each check was signed by the witness and delivered to the said Leonard Woodruff, the first one is for $2,500.00 dated June 17th, 1921, the next one is for $4,875.97, dated October 2nd, 1920, the third is for $300.00 dated February 24, 1921, the fourth is for $200.00 dated June 10th, 1921, the fifth is for $300.00 dated July 27th, 1921; the next is for $200.00 dated September 3rd, 1921, and another one for $1,000.00 dated May 31st, 1921, and another one for $10.-

750.00 dated December 11th, 1922, and one for $5,000.00 dated December 2nd, 1922, and the last one is dated October 10th, 1921 and is for $10,587.50. That finishes the reading of the checks except the check for $10,750.00 in addition to bearing the endorsement of Leonard Woodruff bears
300 the clearing house endorsement, "Pay to the order of any bank, banker, banks or trust company, prior endorsements guaranteed, Exchange National Bank, Tulsa, Oklahoma", and the endorsement of the American National Bank of Ardmore, Oklahoma, on December 11th, 1922.

By Mr. Potter: If the Court please, we offer in evidence Exhibit "39" being the ten checks just identified.

Q. I hand you the ten checks Mrs. Woodruff that have been identified as Exhibit No. "39" and I will ask you if all of those checks you signed?

A. Yes, sir.

Q. You delivered the checks to Mr. Woodruff?

A. Yes, sir.

Q. In the total sum of $41,813.47?

A. Yes, sir.

Q. I will ask you if you received any consideration for those checks?

A. No, sir, none.

By Mr. Turnbull: I object to that, that is invading the province of the Court.

By Mr. Potter:

Q. Did you receive anything for those checks?

A. No, sir.

Q. Were you supposed to receive anything for them?

By Mr. Turnbull: We object to that as a conclusion of the witness.

By Mr. Potter:

Q. For what purpose did you deliver the checks to Mr. Woodruff?

A. To invest in stocks and bonds for me.

301 Q. For you?

A. Yes, sir.

Q. Did you ever receive any securities whatsoever for this amount of money?

A. No, sir.

Q. Did any of the proceeds from those checks ever come back to you in any form?

A. No, sir.

By Mr. Turnbull: If the Court please, counsel has handed me a check made payable to Banks Huntley & Company dated May 20th, 1931, for $15,000.00, drawn on the Security First National Bank of Los Angeles and endorsed by rubber stamp, "Pay to the order of Bank of America of California, Bank Huntley & Company", and that check was signed by Willie Mae Woodruff, and I hereby stipulate and agree that that is the signature of Willie Mae Woodruff on the check and there is a rubber stamp on the back showing it was deposited to Banks Huntley & Company's credit at the bank and that Banks Huntley & Company were stock brokers maintaining an office in Los Angeles, California, at that time.

By Mr. Potter: Very well.

Q. Mrs. Woodruff, I hand you a check marked for identification as Willie Mae Woodruff's Exhibit No. "40" and that appears to be a check drawn against your account to Banks Huntley & Company in the sum of $15,000.00,
302. who filled in that check?

A. I did I think.

Q. Do you know who you delivered that check to?

A. It is my handwriting.

Q. To whom did you deliver the check?

A. Mr. Woodruff.

Q. For what purpose Mrs. Woodruff?

A. To buy bonds.

Q. Did you receive any bonds for that amount?

A. No, I never did.

By Mr. Potter: If the Court please, we offer Willie Mae Woodruff's Exhibit No. "40" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me a certain check and I will stipulate that the instrument dated October 14, 1921, reading at the end, "First National Bank, Los Angeles, California" and the face reading "Memorandum

debit Willie Mae Woodruff $50,366.67", also written out for 50,000 State of Arizona Tax Anticipation Bonds, signed W. D. S. Hammond, Cashier, which signature is printed at the bottom, and over the signature is the name of W. C. Byron in handwriting. I will stipulate and agree that that is in the handwriting of Mr. Byron who was connected
303 with the bank on that date, October 14th, and which instrument is marked as Willie Mae Woodruff's Exhibit No. "41", and an instrument on a credit statement reading, "Bond Department, First Security Company", dated August 1st, 1922, sold by Mr. Schock, directed to Leonard Woodruff description bot. from $50,000.00 par value Arizona Tax Anticipation six percent gold bonds, due 9-15-1922 and totaling $51,140.78, and the next word in the middle of the statement, sold to 20 bonds, Kingdom of Netherlands, six percent gold bonds due 3-1-72 together with accrued interest, totaling $19,219.20 making a total of $31,921.58, making a total on the statement that you bought $51,140.78 and the total sold together with interest $19,219.20, and the last part of the typing reads "Balance due you check herewith $31,921.58," which instrument bears the rubber stamp marked paid August 1st, 1922, and signed First Security Company, Bond Department, and I stipulate that that instrument was issued by the First Security Company on the date it bears and is directed to Leonard Woodruff.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked Exhibit No. "42", addressed to Leonard Woodruff, the statement at the bottom "Balance due you check herewith $31,928.58". I will ask you if you received that
304 check.

By Mr. Turnbull: You mean if it was delivered to her?

By Mr. Potter:

Q. Did you ever receive the check?

A. I don't remember it.

Q. Did you ever receive any consideration for the $50,000.00?

By Mr. Turnbull: That is objectionable as calling for a

conclusion of the witness and is invading the province of the Court.

By Mr. Potter:

Q. Did you ever receive any Arizona Tax Anticipation Bonds?

A. No, sir.

Q. Or the proceeds from the sale of any such bonds?

A. No, sir.

By Mr. Turnbull: Do you claim counsel that she bought those $50,000.00 worth of bonds?

By Mr. Potter: Yes, sir, I do. It says for $50,000.00 worth of bonds.

By Mr. Turnbull: All right. Counsel has handed me a check drawn on the First National Bank of Los Angeles, dated May 18, 1921, in the sum of $14,353.12, the maker is Willie Mae Woodruff, the witness and the payee is the First National Bank of Los Angeles, and no endorsement on the back, pencil notation says, it might be bonds, the check shows it was cashed which indicates it was paid to the payee and I so stipulate that it was paid to the First National Bank of Los Angeles and on May 18th, the same day as the check an instrument bearing that date on the printed receipt head of the First National Bank of Los Angeles, Bond Department, receipt No. 280 signed by Schock, received from Willie Mae Woodruff $14,358.55, being payment for $15,000.00 par value Northern Pacific Great Northern Joint fifteen years six and a half commission bond at ninety-six and a half less accrued interest from 5-18-1921 to 7-1-1921, due 7-1-1936. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and the third instrument being the same date May 18, 1921, on the printed statement head of the Bond Department of the First National Bank of Los Angeles, and it says sold to Willie Mae Woodruff, Los Angeles, California, and under the head description it says $15,000.00 par value, Northern Pacific Great Northern Joint. Fifteen years, six and a half convertible gold bonds, due 7-1-1936, $14,475.00 and less six and a half percent accrued interest from 5-18 to 7-1 $116.45, making a total of $14,358.55,

305

the paid stamp thereon says, "Paid May 19, 1921. First National Bank of Los Angeles, Bond Department,
306 by C. D. Jones.

By Mr. Potter:

Q. I hand you the instrument which has been marked for identification as Exhibit "45" and I will ask you to look at the reading on the bottom of that, whose handwriting is that in?

A. Leonard Woodruff's.

Q. It says, "Due and collected January 1st, 1922"?

A. Yes, sir.

Q. Did you ever receive that money?

A. No, sir.

Q. That is Exhibit No. "45"?

A. Yes, sir.

Q. And Exhibit No. "43", that check was signed by you?

A. Yes, sir.

By Mr. Potter: If the Court please, I offer in evidence Exhibit No. "43", "44", and "45".

By the Court: All right.

By Mr. Turnbull: If the Coure please, counsel has handed me three instruments and I will stipulate that instruments marked Willie Mae Woodruff's Exhibits "46", "46-A" and "46-B" are "46" being a receipt by the cashier of the First National Bank of Los Angeles, dated 12-14-1921 and it says debit Willie Mae Woodruff, $9,709.69 for ten County of Eastland, Texas, five and a half percent bonds, due 1952 at ninety-six forty-four, accrued interest to 12-14-21, charged as per inst. from Mr. Leonard Woodward 12-14-
1921 and Exhibit "46" is a receipt of the Bond De-
307 partment, this is "46-A" a receipt of the Bond Department of the First Security Company in favor of Mrs. Willie Mae Wodruff for the same property being the same amount described in Exhibit No. "46" and also a letter from J. W. Durham, sales manager of Drake, Riley & Thomas for the same property, dated December 9th, 1921, being an offer by Drake, Riley & Thomas to sell Leonard Woodruff $10,000.00 worth of County of Eastland Texas, serial five and a half Highway Bonds, Serial E due 1948 on

a 5.75% basis and it is stipulated that the instrument bears the signature of the party as indicated thereon, and that the signatures thereto are genuine.

By Mr. Potter:

Q. I hand you Exhibit "46" and I will ask you if that was charged to your account.

By Mr. Turnbull: That is a conclusion of the witness, asking her to interpret an original instrument, it shows a deed to her for so much money. He asks her what those things mean, they show what they mean and I make no objection to their use.

By Mr. Potter:

Q. Did you get any of the proceeds from the $10,000.00 County of Eastland Texas Highway Bonds?

308 A. No, sir, not to my knowledge.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibits No. "46", "46-A" and "46-B".

By the Court: Let them go in.

By Mr. Turnbull: I will stipulate that the instruments now handed to me marked Exhibits Nos. "47", "47-A" and "47-B", "47" being a check to Drake, Riley & Thomas, for $15,000.00 dated May 18th, 1921, and endorsed by rubber stamp, "47-A" being a letter from Drake, Riley & Thomas March 22nd, 1921, to Leonard Woodruff and the letter is signed by J. W. Durham and Exhibit "47-B" being a statement on a printed letter-head dated March 22nd, 1921, it is on the letter-head of Drake, Riley & Thomas, which instrument was issued about the date it bears, that the signatures of the person and endorsees are genuine, that about the date this instrument bears that J. W. Durham was an officer of Drake, Riley & Thomas, this Exhibit No. "47-B" being addressed to Leonard Woodruff and is a list of stocks and bonds.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "47" being a check for $15,000.00 signed by you in favor of Drake, Riley

& Thomas, dated March 18th, 1921, will you state if
309 you know who filled out that check?

A. Leonard Woodruff.

Q. Did you deliver that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive those bonds?

A. No, sir.

By Mr. Potter: We offer Exhibit "47" in evidence.

By the Court: Very well.

By Mr. Turnbull: If the Court please, counsel has handed me a check dated May 17th, 1921, check drawn by Willie Mae Woodruff as maker in favor of Drake, Riley & Thomas, on the First National Bank of Los Angeles for $10,198.92, and it bears the endorsement of Drake, Riley & Thomas and attached to that check dated May 11th, I beg your pardon it is May 17th, 1921, the same day, and on the printed receipt of Drake, Riley & Thomas reading, Received of Willie Mae Woodruff the stock listed below, and one is the check for $10,198.92 on account to balance to date, and it says check on Exchange National Bank of Tulsa, and it goes on and lists five—four checks it is which makes a total of $9,513.12, together with other figures leaving a total on the balance of the statement of $9,862.87, and it is signed by

Drake, Riley & Th mas by J. W. Dunham. I stipulate
310 that check was signed by Willie Mae Woodruff for the purpose as testified by the witness and the first check in the sum of $10,198.92 is the same check referred to in the receipt attached thereto, and the reverse side of this receipt appears the following. I do not know in whose handwriting it is, but on the reverse side of this instrument is the following: "This is a deposit to my credit on this date May 17th, 1921, with Drake, Riley & Thomas, all other bonds and stocks being previously paid for in full", and it is signed "Kelly Springfields". Right under that signature is 15,000 paid for 15,000 U. S. Brazil paid for delivered June 17th, 1921, and we stipulate the check and the receipt were issued about the date they bear and the signatures are genuine.

By Mr. Potter:

Q. I hand you an instrument marked as Willie Mae Woodruff's Exhibit "48-A" on which you will see the writing on the back, whose handwriting is that?

A. Leonard Woodruff.

Q. Did you ever receive that stock or any money for the sale of that stock from Mr. Woodruff?

A. No, sir.

311 By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit "48-A" as well as Exhibits "47-A" and "47-B".

By the Court: Very well.

By Mr. Turnbull: Counsel has produced and I stipulate the check dated October 31st, 1921, on the First National Bank of Los Angeles, California, signed by Willie Mae Woodruff, the maker, and the First National Bank of Los Angeles the payee, in the sum of $26,000.00, to which is attached a printed statement No. 466 on which is printed The First National Bank of Los Angeles, Bond Department, received from Willie Mae Woodruff $26,000.00, being payment for 25,000 par value State of Arizona six percent bonds due 9-13-1922 at $100.25 and accrued interest to 10-31-1921, surplus to be credited back to same account with First National Bank, L. A. Delivery of the above described securities on a due bill therefor will be made in accordance with instructions below; and to which is attached a statement on which is printed The First National Bank of Los Angeles, in account with Willie Mae Woodruff, 262 So. Mariposa Avenue, October 31st, 1921, 25,000 State of Arizona Tax Anticipation Bonds at $100.25, total $25,062.50 accrued interest one
312 month fifteen days at six percent $187.50, making a total of $25,250.00, Nos. 401-425 inclusive. These instruments were signed the date they bear and the signatures placed there about the dates they bear, the signatures are genuine, that the instruments were issued by the persons they are purported to be signed by.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked Exhibit No. "49", to whom did you deliver that check?

A. To Leonard Woodruff.
Q. Is the check filled out in his handwriting?
A. Yes, sir.
Q. Did you ever receive any bonds for that check?
A. No, sir.
Q. What was that?
A. I thought Mr. Turnbull read where it was deposited back to my account, but I never received anything.

By Mr. Turnbull: I read it correct.

By Mr. Potter:

Q. Yes, it was read correct, $750.00 was deposited back to your account.
A. Yes, sir, I guess it was, I gave him the money to buy the bonds with, I don't know what he did with the bonds.
Q. You did not get the bonds?
A. No, sir.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit "49" and Exhibit "49-A" and Exhibit "49-B".

By the Court: All right.

313 By Mr. Turnbull: If the Court please, counsel has handed me a letter and I agree that this letter was written by Mr. Dunham on May 24th, 1921, to Leonard Woodruff, but I do not see where it has anything to do with this matter.

By Mr. Potter: This is a letter addressed to the debtor.

By Mr. Turnbull: It has not been offered as yet.

By Mr. Potter: This is a letter written by Drake, Riley & Thomas to Leonard Woodruff and I offer it in evidence, if the Court please.

By Mr. Turnbull: I object to it for the reason no foundation has been made laid to show it has anything to do with this matter, whether it is a letter with respect to some bonds I do not know. The basis of my objection is he is getting in evidence now every bond and every stock that Leonard Woodruff ever bought, apparently it has been shown to the

witness and she has been asked if she got the bonds and I don't think I should be put to the place of refuting it, it doesn't show anything. It doesn't say anything about Leonard Woodruff or any of Willie Mae Woodruff's money.

By Mr. Potter: Oh, yes, it does if the Court please.

By Mr. Turnbull: Yes it does. I will withdraw my objection.

314 By Mr. Potter: Willie Mae Woodruff's Exhibit "50" is dated May 24th, 1921, on the letterhead of Drake, Riley & Thomas, it is addressed to Leonard Woodruff, Esq. 262 S. Mariposa, Los Angeles, California. My dear Mr. Woodruff: We take pleasure in confirming sale to you when as and if issued for the account of Willie Mae Woodruff of $10,000.00 Government of the French Republic, 20 year external seven and a half percent bonds due June 1, 1941, at 95½ and interest.

We enclose herewith statement of the transaction and an interim certificate covering this purchase so that your funds will be drawing interest at the coupon rate. Yours sincerely, J. W. Dunham.

By Mr. Turnbull: Do you expect to show he ever bought any such bonds?

By Mr. Potter: Yes, I do.

By Mr. Turnbull: All right, as if and when issued.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me a check marked Willie Mae Woodruff's Exhibit No. "51" dated July 7th, 1921. I will stipulate the instrument is a check signed by Willie Mae Woodruff, dated July 7th, 1921, for $12,745.00 in favor of Drake, Riley & Thomas, and that it bears the endorsement of Drake, Riley & Thomas and that it has been paid, and it is made by the witness on the
315 date it bears and cashed by the payee about that date.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "51"; in whose handwriting is that check?

A. It is in the handwriting of Leonard Woodruff except I signed the check.

Q. And also the $12,745.00 is in his handwriting?

A. He made it out.

Q. Did you deliver that check to Drake, Riley & Thomas?

A. No, I delivered it to Leonard Woodruff.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive the bonds?

A. No, sir, I did not.

Q. Exhibit No. "51-A" attached to Exhibit No. "51" is merely a statement of the First National Bank to Willie Mae Woodruff. We will pass that just at this time. As to Exhibit No. "52" I presume you stipulate as to that?

By Mr. Turnbull: Counsel has handed me Exhibit No. "52" which is dated April 25th, 1921, being receipt from the Bond Department of the First National Bank and it says received from Willie Mae Woodruff, $3,057.20, being payment for 3,000 par value Turlock Irrigation District six percent gold bonds at par and accrued interest to April 25th, 1921, due July 1st, 1951. And I stipulate with counsel that Exhibit "51-A" which counsel has attached to
316 "51" is a statement from the Bond Department of the First National Bank to Willie Mae Woodruff, dated April 25th, 1921, sold by O. H. Schock, 3,000 par value Turlock Irrigation District six percent gold bonds, due 7-1-1951 at $100.00 and the total amount is $3,057.00 plus $57.00 accrued interest from 1-1- to 4-25, and that receipt is marked paid April 26th, 1921 by the First National Bank of Los Angeles, the Bond Department, by C. D. Jones. We stipulate that those instruments were signed about the date they bear by the person who is purported to have signed them and delivered to the person to whom addressed.

By Mr. Potter.

Q. Mrs. Woodruff, did you ever receive the bonds mentioned in these statements and this check?

A. No, sir, I never did.

By Mr. Potter: If the Court please, we offer Exhibits "51-A" and "52" in evidence.

By the Court: Let them go in.

By Mr. Turnbull: Counsel has handed me three checks, each of which is drawn on the First National Bank of Los Angeles, each of which Mrs. Woodruff is the maker and each of which the First National Bank is payee, dated July 29th, 1921, in the sum of $25,000.00, principal sum,
317 and another check dated March 30th, 1921, in the sum of $5,000.00, and the third check dated June 6th, 1921, in the sum of $15,109.38, none of said checks being endorsed but each shows they were cashed by the payee, the First National Bank of Los Angeles. I stipulate each check was made by the witness and paid to the payee and for the amount shown on the dates they bear.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you three checks marked Willie Mae Woodruff's Exhibits "53", "54" and "55" and I will ask you if you filled those checks out.

By Mr. Turnbull: Do you accept the stipulation I made?

By Mr. Potter: Yes, sir.

A. Mr. Woodruff filled them out and I signed them, that is my signature.

By Mr. Potter:

Q. You delivered them to Mr. Woodruff?
A. I did.
Q. For what purpose?
A. To buy bonds.
Q. Were the bonds ever delivered to you?
A. No, sir.
Q. Were the proceeds from the sale of any of those bonds ever delivered to you?
A. No, sir.

By Mr. Potter: We offer Exhibits "53", "54" and "55" in evidence.

318 By the Court: Let the exhibits go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "56", I will ask you if you ever saw that instrument before.

By Mr. Turnbull: If the Court please, Exhibit No. "56" I will stipulate it is on the printed letterhead of The First Security Company of Los Angeles, California, the Bond Department, and is dated March 4, 1922, and it shows sold to Willie Mae Woodruff Los Angeles, California, 5,000 Kingdom of Netherlands 50-yr. six percent sinking fund gold bonds, due March 1, 1972, at 94. $4,700.00 and $1.67 accrued interest from 3-1 to 3-3, total amount $4,701.67, and that receipt is stamped paid March 4, 1922, by the First Security Company, Bond Department, and written across the face of that statement it says sold. I stipulate that instrument was issued on the date it bears and delivered to the person to whom it is addressed.

By Mr. Potter:

Q. I hand you the exhibit being No. "56" which has the word, sold on it, do you know whose handwriting that is?

By Mr. Turnbull: Do you accept the stipulation?

By Mr. Potter: Yes, sir.

Q. Did you ever receive $4,701.67 from the sale of the bonds?

A. Not to my knowledge I did not.

By Mr. Potter: We offer in evidence Exhibit "57".

319 By the Court: Very well.

By Mr. Potter:

Q. I hand you Exhibits "57" and "57-A" and "57-B" and "57-C".

By Mr. Turnbull: As to Exhibits "57", "57-A" and "B", "57" seems to be a debit charge, Willie Mae Woodruff, dated June 19, 1922, for $20,651.67, for certain bonds named therein, signed by the First National Bank of Los Angeles, Exhibit "57-A", that instrument bears the date of June 19, 1922, it is a printed receipt of the First National Bank of the First Security Company, the First Security Company Bond Department, and it is a receipt for the

$20,651.67 and being for the same bonds, being payment for 20,000 par value Venice Union High School District five percent bonds, $10,000.00 1923 at $102.66, $10,000.00 1942 at $104.19, and accrued interest to 6-19-1922. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and it is signed by the Bond Department of the First Security Company and Willie Mae Woodruff's Exhibit "57-B" is a printed statement on the letter-head of the Bond Department of the First Security Company and it is dated June 20th, 1922, sold to Willie
320 Mae Woodruff 10,000.00 Venice Union High School District due 7-1-1934 at $103.66 and $10,000.00 Venice Union High School District due 7-1-1942 $105.19, making a total of both items of $20,885.00 and discount five percent accrued interest from 6-19 to 7-1 amounts to $33.33 less one percent which is $200.00 and the certificate No. 2991 for $20,651.67 and it is stamped paid June 20th, 1922, First Security Company, Bond Department, and Willie Mae Woodruff's Exhibit "57-C" is a duplicate thereof.

By Mr. Potter:

'Q. Mrs. Woodruff, I will ask you if you received $20,000.00 worth of Venice Union High School District bonds as evidenced by that certificate?

A. No, sir, I did not.

Q. If the bonds were sold did you receive the money therefor?

A. I did not.

By Mr. Potter: I offer the exhibits in evidence.

By Mr. Turnbull: Do you accept my stipulation?

By Mr. Potter: Yes, sir.

By the Court: Let the exhibits go in.

By Mr. Turnbull: If the Court please counsel has handed me Exhibit No. "58" and "58-A". I stipulate that Exhibit No. "58" is a receipt from the First National Bank of Los Angeles, signature thereon being that of W. C. Bryan. I will stipulate that he was an officer of the First Na-
321 tional Bank of Los Angeles on the date the instrument bears which is March 3d, 1922, and it is a memorandum

debit Willie Mae Woodruff for $4,701.67 for 5-2500 Guilder Bonds of the Kingdom of the Netherlands 50 years six percent S. F. bonds due 1972 at 94, charged as per instructions 2-3-1922, and Exhibit No. "58-A" is No. 914, received from Mrs. Willie Mae Woodruff on March 3, 1922, $4701.67 being payment for 5-2500 Guilder par value bonds of the Kingdom of the Netherlands, 50 years six percent S. F. Bonds at 94, and accrued interest to 3-3-1922 due 1972. Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below, and it is signed Bond Department, First Security Company by Schock. I stipulate those instruments were issued by the person who purported to sign them on or about the dates they bear and delivered to the person to whom they were addressed about the dates they bear. Are these the same bonds heretofore mentioned in a former exhibit?

By Mr. Potter: No, sir.

322 By Mr. Turnbull: They are different bonds and counsel is not duplicating the item, it is a different item.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "58" and it shows your account has been debited with $4701.67 for these bonds mentioned in this exhibit, and I want to ask you if you ever received those bonds.

A. No, sir, I did not.

Q. If the bonds were sold did you receive the money therefor?

A. No, sir, I did not.

By Mr. Turnbull: If the Court please counsel has exhibited to me Willie Mae Woodruff's Exhibit "59" which is a buy order signed by Leonard Woodruff for Willie Mae Woodruff on the printed buy order of the First Security Company, dated July 28th, 1922, salesman O. H. Schock, and it says please buy for my account and risk 20 shares First National Bank, Los Angeles, beneficial certificates, register in name of Willie Mae Woodruff, charge to her account with First National Bank, Los Angeles, and it is signed by Leonard Woodruff for Willie Mae Woodruff and the

price is $375.00 net. I stipulate the instrument is a buy order and is for 20 shares of the bank referred to in the letter now in evidence and being heretofore referred to in a previous exhibit.

By Mr. Potter: That is correct.

323 Q. Did you receive this 20 shares of First National Bank stock?

A. No, sir.

By Mr. Turnbull: Do you accept the stipulation in connection with the instrument?

By Mr. Potter: Yes, sir. If the Court please, we offer it in evidence.

By the Court: Let it go in.

By Mr. Turnbull: If the Court please, counsel has handed me five checks and I stipulate each check is drawn on the First National Bank of Los Angeles, the maker of each instrument being the witness now on the stand and the first one is dated November 12th, 1926, in the principal sum of $6,000.00, the payee is Leonard Woodruff and the endorsee is Leonard Woodruff. The second check is for $5,000.00 and being the same maker and the same payee and endorsed by Leonard Woodruff and that check is dated April 12th, 1926, the third is in the sum of $18,000.00 and is dated July 27th, 1925, payable to Leonard Woodruff and signed by Willie Mae Woodruff, that check was also cashed. The next check is dated February 9th, 1925, to Carlin & Company for $1592.06, endorsement by rubber stamp and deposited to the credit of Carlin & Company and the face of the check reads in addition to the sum of $1592.06 for seven insurance policies, one on an auto and other items. The next check is dated

324 December 29th, 1924, maker is Willie Mae Woodruff and the payee is Leonard Woodruff, amount of the check is $14,181.66, and it is endorsed by Leonard Woodruff. The next check is dated December 3rd, 1926, in the sum of $600.00, signed by Willie Mae Woodruff in favor of Jack Tomas, endorsed by Jack Tomas. On the back of the check it says, "For labor on my Oregon ranch. I owe W. M. W. this $600.00. L. J. W." I stipulate each check was made by the

witness on the stand and the signature of the persons thereon purported to be are genuine. The endorsements are as I have stated. Making a total of $45,374.26 of the six checks. This item for insurance, do you think it goes in here Mr. Potter?

By Mr. Potter: I don't think it should be in here.

By Mr. Turnbull: Will you deduct that from your total?

By Mr. Potter: Yes, sir, that will leave $43,078.20.

Q. Mrs. Woodruff, I hand you five checks here and I will ask you if you filled those checks out?

A. I filled out the one for $5,000.00 and one for $600.00.

Q. Did you deliver those checks to Mr. Woodruff?

A. Yes, sir.

Q. What was the purpose in delivering those checks to Mr. Woodruff?

A. That one of April 12th, 1926 for $5,000.00 was
325 to buy bonds and the one to Jack Thomas was for labor, he was to give me bonds for it.

Q. And the other one?

A. Leonard filled out that one for $18,000.00.

By Mr. Turnbull: That is dated July 27th, 1925?

A. He was to buy bonds with that.

By Mr. Potter:

Q. That is the $18,000.00 check?

A. Yes, sir, I don't know who filled these other two out.

Q. The checks dated December 29th, 1924, and November 12th, 1926, you don't know who filled those checks out?

A. No, I don't know who put the amounts in there.

Q. To whom did you deliver the checks?

A. To Leonard Woodruff. They were not always filled out when I gave them to him.

Q. For what purpose did you deliver those checks to Leonard Woodruff?

A. To buy bonds with and to invest in bonds.

By Mr. Potter: If the Court please, we offer the five checks in evidence.

By the Court: Very well.

By Mr. Turnbull: Counsel has handed me purported Exhibits No. "61", No. "61-A" and "61-B", and has asked me to stipulate concerning the same. Exhibit No. "61" was issued by the Assistant Cashier of the First National Bank of Los Angeles, May 18th, 1922, and it is a memorandum debit Willie Mae Woodruff $40,136.55 for 40 M. N. S. A. 4th and 4¼-1938 at $99.94, charged in account and ac-
326 cordance with instructions to Mr. Schock, and Exhibit "61-A" is on the statement of the Frist Security Company Bond Department to Willie Mae Woodruff, dated 5-19-1922 and it shows $40,000.00 price ninety-nine ninety-four one-hundredths dollars, principal $39,976.00, interest $160.55, total $40,136.55, and Exhibit "61-B" is a letter from the First Security Company signed by Mr. Schock May 18th, 1922, addressed to Willie Mae Woodruff, and it says: "Dear Mrs. Woodruff: Confirming my telephone conversation of today with Mr. Woodruff, I have sold you $40,000.00 U.S.A. 4th 4¼ Liberty Loan Bonds of 1938 at $99.94. and in accordance with hi. instructions I am today charging your account with the First National Bank of Los Angeles $40,136.55, being payment in full for the above as per detailed statement enclosed herewith. At your convenience I shall be pleased to have you or Mr. Woodruff call to accept delivery of the above bonds. Very truly yours, First Security Company, By O. H. Schock." I stipulate that Exhibit No. "61" bears the endorsement of the Assistant Cashier of the First National Bank and I stipulate that same was charged to the account of Willie Mae Woodruff on the date it bears which was May 18th, 1922, in the sum of $40,136.55.

327 By Mr. Potter: I accept the stipulation.

Q Mrs. Woodruff, I hand you Exhibit No. "61" showing the purchase of $40,000.00 worth of Liberty Loan Bonds. did you receive the bonds?

A. No, sir.

By Mr. Potter: I offer these three exhibits in evidence.

By the Court: All right.

By Mr. Potter:

Q. I hand you Exhibit No. "62" which is a check.

By Mr. Turnbull: Yes, as to Exhibit No. "62", "62-A" and I will state the check Exhibit "62" bears the signature of Willie Mae Woodruff dated April 13th, 1923, for the sum of $8,984.64, and it is made payable to Drake, Riley & Thomas and bears the endorsement of Drake, Riley & Thomas to which is attached Exhibit "A" on the printed statement of the Company dated April 12th, 1923, addressed to Willie Mae Woodruff and it says 15,000 Pacific Gas & Electric Corp., First and Ref. 5½ S price 98, interest accrued four months eleven days $300.30, maturity December 1st, 1963, making a total of $15,000.30 and it says paid by credit on books of $6,015.66 and check for *for* $8,984.64
328 from Mrs. Woodruff, and as to Exhibit "62-B" the slip attached thereto I can't stipulate concerning that, it says, "This bond belongs to Willie Mae Woodruff, $15,000.00 Pacific Gas & Electric Company" signed by Leonard Woodruff. I don't know anything about that.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you herewith Exhibit "62" and I will ask you if you received the $15,000.00 Pacific Gas & Electric Corporation bond?

A. No, sir.

Q. Look at Exhibit No. "62-B", do you know whose handwriting that is? There is apparently two handwritings on that slip, do you know anything about either or both of them?

A. This one in ink was written by Leonard and the one in pencil I don't know about it.

By Mr. Turnbull: May I examine her on the last one?

By Mr. Potter: Yes, sir.

By Mr. Turnbull:

Q. I notice this Exhibit "62-B", the first part of it says account Mrs. Willie Mae Woodruff, that is in pencil?

A. Yes, sir.

Q. You don't know whose handwriting that is?

A. No, I do not.

Q. These bonds belong to Willie Mae Woodruff, $15,000.00 and it has Leonard Woodruff's name at the bottom, is that his handwriting?

A. Yes, sir.

Q. This Exhibit "62-B" is a narrow yellow slip about two and a half inches wide?

329 A. Yes, sir.

Q. Where did you get that slip?

A. It came out of Mr. Woodruff's file when the income tax people left.

Q. It says these bonds belong to Willie Mae Woodruff, did you ever see any other instrument to which this slip was attached?

A. No, sir.

Q. Were you present when that instrument was signed?

A. No, sir.

Q. Opposite the signature at the extreme left-hand corner it says, "Signed", who wrote that?

A. I think it was Leonard.

Q. And the rest of it was written by Leonard?

A. Yes, sir.

Q. Did you ever see him put "Signed" before his name?

A. Yes, I have.

By Mr. Turnbull: That is all.

By Mr. Potter: If the Court please, we offer the three exhibits in evidence.

By the Court: All right.

By Mr. Turnbull: If the Court please, counsel has handed me a check marked Willie Mae Woodruff's Exhibit No. "63" in the sum of $64,000.00, and it is drawn on the First National Bank of Los Angeles, signed by Willie Mae Woodruff in favor of the First National Bank and I will stipulate that her signature on the check is genuine, and that the amount of money was paid and charged to the account of Willie Mae Woodruff.

330 By Mr. Potter: You do not stipulate as to where the funds went?

By Mr. Turnbull: No, sir, I do not.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Willie Mae Woodruff's

Exhibit No. "63" and will ask you if you know whose handwriting that check is filled out in.

A. Leonard Woodruff's.

Q. Did you deliver that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

By Mr. Turnbull: And the date please?

By Mr. Potter: March 4th, 1922.

By Mr. Turnbull: Do you agree that is the date of the check?

By Mr. Potter: Yes, that is correct. The bank mark shows paid March 4th, the year is not clear.

By Mr. Turnbull: It is 1922, you agree to that?

By Mr. Potter: Yes, sir. If the Court please, I offer the check, No. "63" in evidence.

By the Court: All right.

By Mr. Turnbull: Counsel has presented me with a slip marked Willie Mae Woodruff's Exhibit "64", and I will state that I have seen the signature of J. W. Dunham before on written instruments and I will stipulate this in-

331 strument reads, "Received the securities as listed hereon from Leonard Woodruff, 12-13-1921, Drake, Riley & Thomas, by J. W. Dunham." If the Court please, I stipulate that is the signature of Mr. Dunham, an officer of the Company and on the reverse side it reads, $15,000.00 Kelly Springfield Tire Company eight percent bonds, 1931, temporary, and the word delivergd and right under it it says, L.W., and under that it says "Marked in envelope with Mrs. Woodruff's name", and under that "Register in N.O. Willie Mae Woodruff", and then under that it says Canadian Northern Ry. Company, twenty-five years 6-1/25 of 7-1-1946 (temporary) and then under that it says delivered L.W., and below that there is $15,000.00 French S.S. 1946, and it says delivered L.W. and then there is a line drawn and below that is 300 shares Sears Roebuck delivered L.W. In each instance where the word delivered it is apparent that is the handwriting of Leonard Woodruff, and,

the word "delivered" is in his handwriting. I stipulate that instrument was issued in respect to those securities on the date it bears which is December 13th, 1921, and it may be introduced in evidence as Exhibit "64".

332 By Mr. Potter: All right, we agree to that.

By Mr. Turnbull: Counsel has handed me an instrument marked as Exhibit "65", "65-A", "65-B", "65-C" and "65-D" and requests the following stipulation which I agree to. Exhibit No. "65" is on the letterhead of the First Securities Company of Los Angeles, dated February 9, 1925, addressed to Mrs. Willie Mae Woodruff, 262 S. Mariposa, Los Angeles, California. "Dear Mrs. Woodruff, Enclosed is a statement covering the sale of your $10,000 L.A. Gas & Electric Corp. 6% bonds of 1942 and purchase of $10,000.00 Pacific Steamship 6½s showing a balance due you of $655.14 which we have today credited to your checking account with the First National Bank as per duplicate deposit tag attached. Yours very truly, Signed O. H. Schock", and attached to that is Exhibit "65-A" on the form of a duplicate slip of the First National Bank dated the same day, February 9, 1922—1925 if the Court please, Willie Mae Woodruff by Bond Agency, and down under where it says Checks 16-54, $655.14 and it is stamped on the slip "Duplicate of original deposit ticket," and it is initialed by some person as cashier, to which is also at-

333 tached Exhibit No. "65-B" on the printed statement of the First Security Company Bond Department addressed to Willie Mae Woodruff, 262 So. Mariposa Avenue, Los Angeles, California, and then below that it says, $10,000.00 Los Angeles Gas & Electric Corp. Series H. Gen. and Ref. Mtg. six percent gold bonds Nos. M-4661-70 due 3-1-1942, price one hundred two and a quarter, amount $10,225.00 and accrued interest 9-1- to 2-6- $258.33 and it makes a total of $10,483.33, and then $10,000.00 Pacific Steamship Company First Pfd. Marine equipment mortgage six and a half percent Serial Gold Bonds due bill No. 6466 due 1-1-1940 price $97.65, amount $9,765.00 interest accrued 1-1 to 2-6, $63.19, making a total of $9,828.19. Balance credited to your checking account First National Bank, Los Angeles, $655.14, and Exhibit "65-C" is an invoice to Willie Mae Woodruff which is a duplicate of the preceding one, "65-B".

Exhibit No. "65-D", on the letterhead of the First Security Company, the left-hand corner being torn off, and it bears date of March 16th, 1925, addressed to Mrs. Willie Mae Woodruff, 262 S. Mariposa, Los Angeles, California, and it reads, "Dear Madam: You are advised that the permanent Pacific Steamship Company, six and a half due serially are ready for delivery.

334 If you will deposit your temporary certificates for the above with us we will be pleased to forward them for exchange and delivery to you upon the securities when received by us. Yours very truly," Signed "O. H. Schock". On the bottom of this exhibit there is certain handwriting which I decline to stipulate anything about, as I do not know anything about it. I do stipulate that the instruments which I have read to your Honor are genuine and the names purported to be signed thereto are genuine and they were delivered on about the date they bear. Do you accept this stipulation?

By Mr. Potter: Yes, sir, I do, and we offer the exhibits in evidence.

Q. Mrs. Woodruff, I hand you Exhibit "65-D" with respect to this writing at the bottom, whose handwriting is that?

A. I do not know as to that, but it is Leonard Woodruff's signature at the bottom.

Q. You mean the L.J.W. at the bottom was signed by Leonard Woodruff?

A. Yes, sir, and the rest of it I do not know about.

By Mr. Turnbull: If the Court please, I do not have any objection to the exhibits except Exhibit "65-D", the writing at the bottom of that exhibit, I object to it at this time.

335 By the Court: Very well.

By Mr. Turnbull: Counsel has handed me Exhibits "66", "66-A", "B" and "C", with respect to "66-A", I will stipulate that is a receipt signed by the First Security Company and the signature is that of Mr. Schock thereon, it is dated February 5, 1925, and it reads in part, received from Willie Mae Woodruff, $5161.94 being payment for

5,000 par value Pacific Dock and Term. Company, first mortgage six and a half percent due 1929, at 101 and accrued interest to 2-5-1925, and principal $5,050.00 and interest $111.94, making a total of $5,161.94. Exhibit "66-B" is a buy order purchase of Mrs. Willie Mae Woodruff dated February 5, 1925, for ten $1,000.00 bonds of the Los Angeles Gas & Electric Company which matures in 1942 and down at the bottom it says payment and delivery instructions "Paid for Pac. Steamship Company, 6½" and it is signed by O. H. Schock, and the numbers are given and there are certain things on the exhibit which I cannot read. Exhibit "66-C" is a letter of the First Security Company dated April 7th, 1925, addressed to Leonard Wood-
336 ruff, 262 S. Mariposa, Los Angeles, California. Dear Sir: At your convenience kindly call and take delivery of the Permanent Pacific Steamship Company 6½, 1940, exchange for your temporary certificate recently deposited with us. Kindly bring our receipt for surrender. Yours very truly, O. H. Schock. And Exhibit No. "66" is a letter from the First Security Company to Leonard Woodruff, and it says, attached hereto is my receipt No. 4065, showing $5,161.94 received from Willie Mae Woodruff for $5,000.00 Pacific Dock and Terminal first 6½ of 1929.

There is also attached duplicate deposit tag for $300.00 which represents matured coupons of September 1st, 1924, which were attached to the $10,000.00 L.A. Gas & Electric 6 S. of 1942, which I took today in payment for $10,000.00 Pacific Steamship 6½ of 1940. Yours very truly, O. H. Schock. If the Court please, I stipulate that those instruments are genuine instruments, that is they were signed by the person purported to have signed them and on or about the date they purport to bear.

By Mr. Potter: We offer the exhibits in evidence, if the Court please.

337 By Mr. Turnbull: Do you accept the stipulation?

By Mr. Potter: Yes, sir, I do.

Q. Mrs. Woodruff, I hand you two checks marked as Exhibits Nos. "67" and No. "68", is that your signature attached to those checks?

A. Yes, sir.

Q. One check is for $18,000.00 and one for $9,415.66, those checks bear your signature?

A. Yes, sir.

By Mr. Turnbull: I will stipulate the signatures are hers.

By Mr. Potter:

Q. You filled out the checks?

A. No, sir.

Q. You deliver the checks to aayone?

A. To Mr. Woodruff, yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds in exchange for those two checks?

A. No, sir.

Q. Both checks are payable to the First National Bank?

A. Yes, sir.

Q. The First National Bank of Los Angeles is No. "67" and No. "68" says to the First National Bank?

A. Yes, sir, they were both to go to the First National Bank of Los Angeles.

By Mr. Turnbull: If the Court please, they were received by the First National Bank of Los Angeles, and I so stipulate.

By Mr. Potter: We offer the two checks in evidence, if the Court please.

338 By the Court: All right, let them be admitted.

By Mr. Potter:

Q. As to Exhibit No. "69" and No. "69-A", Mrs. Woodruff, is that your signature on "69"?

A. Yes, sir.

By Mr. Turnbull: If the Court please, counsel has handed me Exhibit No. "69" and I will stipulate the check is signed by Willie Mae Woodruff in favor of Drake, Riley & Thomas, dated May 13th, 1924, in the sum of $8,970.00, and it is endorsed by Drake, Riley & Thomas and "69-A" is the printed letterhead or the hand bill of Drake, Riley & Thomas, dated May 13th, 1924, sold to Mrs. Willie Mae

Woodruff, Los Angeles, California, 100 shares Southern Calif. Edison Company six percent Preferred Stock, price $90.00, $9,000.00, interest dated June 1st less eighteen days $30.00, leaving a total of $8,970.00, and it is stamped paid by Drake, Riley & Thomas, May 13th, 1924. I stipulate the instruments are what they purport to be, the signatures are genuine, the money represented by the check of $8,970.00 was paid to the maker, Drake, Riley & Thomas and that it represents purchase price of the Southern California Edison Company stock.

339 By Mr. Potter:

Q. Mrs. Woodruff, did you get that 100 shares of Southern California Edison Company stock?

A. No, sir.

Q. If that stock was sold did you get the benefits thereof?

A. No, sir, I never did.

By Mr. Potter: We offer the exhibits in evidence.

By the Court: Let them be admitted.

By Mr. Potter: Mr. Turnbull, I hand you Exhibits No. "70" and No. "70-A", and ask you if you desire to stipulate concerning those instruments?

By Mr. Turnbull: As to Exhibits No. "70" and "70-A" I stipulate that the first one is a check signed by Willie Mae Woodruff as the payee in favor of the First Security Company, dated 4-9-1923, and it is in the sum of $19,880.00 and the check is drawn on the First National Bank of Los Angeles, that check is properly endorsed and was cashed, it was paid by the bank on which it was drawn, and No. "70-A" is an invoice on the printed form of the First Security Company and it reads to Willie Mae Woodruff, sold to 20,000 Union Oil and California Serial six percent gold bonds, Serial B, due bill 4221, due 4-1-1926, price 99¼, amount $19,850.00, accrued interest 4-1 to 4-10 $30.00, making a total of $19,880.00 and it is stamped paid April
340 19th, 1923, by First Security Company, Bond Department by Farrel. I stipulate those instruments were issued on the dates they bear and delivered to the person addressed therein on the dates they bear and that the signatures are genuine.

By Mr. Potter:

Q. Mrs. Woodruff, did you receive the $20,000.00 Union Oil of California bond?

A. No, sir.

By Mr. Potter: We offer in evidence Exhibits "70" and "70-A".

By the Court: Let them be admitted.

By Mr. Turnbull: Counsel has handed me Exhibits No. "71" and "71-A" and I stipulate that "71" is a check of Willie Mae Woodruff to the First Security Company on June 7th, 1923, in the sum of $15,500.00 and that they collected the money represented by the check, and Exhibit "71-A" is a statement on the printed form of the First Security Company Bond Department to Willie Mae Woodruff, salesman Schock, sold to $15,000.00 City of Los Angeles Water Works 4½ No. M. 10230 44 due 12-1-1929 price $100.25, amount $15,037.50, and the accrued interest was $45.00 making a total of $15,082.50, and it shows a balance
341 due you of $417.50, which is credited to your account in the First National Bank. I stipulate those instruments were properly signed at the time they were issued, the dates shown thereon.

By Mr. Potter:

Q. Mrs. Woodruff, did you receive the bonds represented by this check?

A. No, sir, I did not.

Q. The credit of $417.50 shown on Exhibit "71-A" was credited to your account?

A. Yes, sir, I presume so.

Q. But you did not receive the bonds or the proceeds therefrom?

A. No, sir, I did not.

By Mr. Turnbull: You accept my stipulation?

By Mr. Potter: Yes, sir, I do.

By Mr. Turnbull: And at that time she was credited with $417.50?

By Mr. Potter: Yes, sir, that is correct. We offer the exhibits in evidence.

By the Court: All right.

By Mr. Turnbull: Counsel has handed me Exhibits "72" and No. "72-A" and "B", if the Court please. First in respect to Exhibit No. "72" it is a check by Willie Mae Woodruff and is dated June 16th, 1922, in the amount of $17,500.00 made payable to Drake, Riley & Thomas, and endorsed by Drake, Riley & Thomas, and it shows on
342 the back that the money was paid to Drake, Riley & Thomas, and as to Exhibit No. "72-A" it is a statement of account to Leonard Woodruff, dated May 27, 1923, from Drake, Riley & Thomas and it shows the following stocks and bonds listed thereon: June 16, 1922 Cash Credit $17,500.00, June 15, 1922, 300 Sh. Cuban Amer. Sugar $7,155.00, July 7, 1922, (6/13) 5 M. San. J. Lt & Pr. 6/50 $5047.50, July 7, 1922, (6/13) 5 M. Union Oil of Calif. 5/31 $4861.80, July 7, 1922, 5 M. S.J. Lt. & Pr. 6/50 Credit $5,080.00, July 7, 1922, 5 M. Union Oil of Calif. 5/31 Credit $4753.47, July 7, 1922, 6/13 5 M. Crane Creek 8/6 6/32 $5,041.00, July 7, 1922, 6/13 5 M. Sunnyside Sp. $5041.00, July 24, 1922, Union Oil Cpn. Credit $125.00, March 15, 1923, 400 Sh. Cuban Amer. Sugar Credit $14,122.50, March 15, stamps Amer. Sugar $1.60, March 17, 1923, 200 Sh. General Motors Credit $2955.00, March 17, Stamps General Motors $8.00, March 19, 1923, 100 Sh. Cuban Amer. Sugar Credit $3515.00, March 19, 1923, Stamp Amer. Sugar .40, Total charges $27,156.30, Total Credits $48,050.97, Credit Balance $20,894.67."

343 As to Exhibit "72-B", I can't identify or stipulate concerning it. I would have to ask Mr. Woodruff as to that, I cannot stipulate as to it. With respect to instrument Exhibit No. "72" and "72-A" but not as to "72-B", the signatures are genuine and they were issued by the persons they are purported to be issued by and delivered to the persons they were supposed to be delivered to.

By Mr. Potter: If the Court please, I will withdraw Exhibit No. "72-B" as Exhibit No. "72-A" shows the credit we are seeking to show.

By Mr. Turnbull: On the reverse side of Exhibit No. "72" which is the check there is certain handwriting that I want to ask Mr. Woodruff about, pencil notation that is

very fine handwriting, and it looks like "Republic France Bond bought by W.M.W. sold and spent by L.J.W." I do not object to Exhibit "72" except the part I have just read on the back and that is subject to proof.

By the Court: All right.

By Mr. Potter:

Q. I hand you Exhibit No. "73", what is that Mrs. Woodruff?

By Mr. Turnbull: I will stipulate, if the Court please, that that is a memorandum debit slip of the First National Bank of Los Angeles, California, dated September 29, 1921, and it says debit Willie Mae Woodruff, $10,197.87 for
344 ten $1,000.00 L.A. City School Bond District five and a half percent bonds, for 5,000 due 11-1-1925 and 5,000 due 11-1-1923 in accordance with your instructions and as per our letter of 9-28-1921, and it is signed by the Cashier by A. C. May, Jr., Vice President, and is endorsed on the back L.A. City Schools Exemption Taxes, L.W., F. Security Company or First National Bank and it is stenciled paid. I stipulate that the signatures thereon are genuine. As to the pencil notation on the back I do not know anything about that.

By Mr. Potter:

Q. Look at the pencil notation on the back and state whether or not you know whose handwriting that is in.

A. Leonard Woodruff's name.

By Mr. Potter: If the Court please I would like to offer it in the record.

By Mr. Turnbull: I object to it, Mr. Woodruff is not here, I object to his reading it in evidence until it is properly identified.

By Mr. Potter: I offer this paper, this exhibit in evidence, the handwriting has been identified as that of Leonard Woodruff's.

By Mr. Turnbull: That does not prove it is true, it is hearsay to anyone.

By Mr. Potter: You can introduce any evidence subject to cross examination on that particular point.

345 By Mr. Turnbull: I have asked that the debtor be here and that he be produced today and he is not here, and my point is that merely proving his handwriting does not prove the recitals of the handwriting.

By Mr. Potter: It is his handwriting, we have shown it and we have a right to introduce any writing signed by him.

By Mr. Turnbull: You can't put it in evidence to prove the truth of the writing.

By Mr. Potter: That is up to the Court, the rule of evidence will permit if, I believe.

By the Court: The writing on the back is not binding here otherwise let it go in.

By Mr. Turnbull: Exhibit No. "74" is a check signed by Willie Mae Woodruff to the First National Bank of Los Angeles dated 12-27-1924 in the sum of $4871.67 and that the check has been paid and that "74-A" is a printed receipt from the First Security Company and signed by Schock dated the same day as the check, Exhibit No. "74", and it says, received from Willie Mae Woodruff $4871.67, being payment for $5,000.00 par value Central Arizona L. & P. six percent bonds, 1942, at 97 and accrued interest to 12-27-1924. Delivery of the above described securities or a due bill therefor will be made in accordance with
346 instructions below. Principal $4850.00 interest $21.67, total $4871.67, and it is signed by First Security Company by Schock, and the amount of the check and the receipt are the same and we stipulate that instrument was issued on the date it bears and the signatures are genuine, and that the money was received by the First National Bank of Los Angeles on December 29th, 1924, do you agree to that?

By Mr. Potter: Yes, sir, I do.

By Mr. Turnbull: And the instruments were delivered to whom they were addressed?

By Mr. Potter: Yes, sir, that is true.

Q. Mrs. Woodruff, did you receive the 5,000 Central Arizona L. and P. Bonds?

A. No, sir.

Q. If the bonds were sold and disposed of did you receive the money therefor?

A. No, sir, I did not.

By Mr. Potter: We offer Exhibit No. "74" and Exhibit "74-A" in evidence.

By the Court: Let the exhibits go in.

By Mr. Turnbull: If the Court please, counsel has handed to me Exhibits Nos. "75", "76" and "77" and I stipulate that Exhibit No. "75" is a check signed by Willie Mae Woodruff, payee, to the First National Bank, dated 11-7-1924, in the amount of $5,000.00 and it has a notation on the back, payment on First National Bank stock. Exhibit No. "76" is a check signed by Willie Mae Wood-
347 ruff as maker to the First Security Company, payee, dated July 8th, 1924, in the amount of $10,826.40, endorsed the First Security Company and Exhibit No. "77" is a check on the First National Bank of Los Angeles, they are all drawn on the First National Bank and this one is dated September 20th, 1920, and the payee is Drake, Riley & Thomas, the maker is Willie Mae Woodruff, in the amount of $14,552.61, and it is endorsed by Drake, Riley & Thomas, and that they received the money thereon. We stipulate that the signature thereon is genuine and that the checks were delivered on or about the dates they are dated.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you three checks, Exhibits Nos. "75", "76" and "77", and I will ask you if you know who filled out any portion of the checks except your signature thereto.

A. No, that is my signature.

Q. You have referred to Exhibits "76" and "77", Mr Woodruff filled those out?

A. Yes, sir.

Q. Did you deliver the checks to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds for me.

Q. Did you ever receive any of the bonds?

348 A. No, sir.

Q. As to Exhibit No. "75", did you fill out that check?

A. That is my signature to it.

Q. Who did you deliver the check to?

A. Leonard Woodruff.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive the bonds?

A. No, sir.

Q. Or the proceeds therefrom if the bonds were improperly disposed of?

A. No, I never did.

By Mr. Potter: We offer the three checks, Exhibits Nos. "75", "76" and "77" in evidence, if the Court please.

By the Court: Let them go in.

By Mr. Turnbull:

Q. Mrs. Woodruff, I notice a notation on the check Exhibit No. "75" which says, "Payment on First National Bank stock," whose handwriting is that?

A. I don't know.

Q. That same handwriting has been on a lot of other—of these checks, does that look like Leonard's writing?

A. No, I don't know whose it is.

Q. Do you know when that writing got on the check, payment for stock?

A. No, I don't know.

Q. To refresh your recollection it might have been for bonds or it might not have been for bonds but it might have been for stock of the bank, would that refresh your memory at all?

A. No, it don't.

349 By Mr. Turnbull: All right, that is all. Counsel has offered me Exhibits Nos. "78", "78-A" and "78-B" and I offer the following stipulation: "78" is a debit slip issued by the First National Bank of Los Angeles showing that bank had debited the account of Willie Mae Woodruff for investment $26,500.00 on March 5th, 1923, and

it is signed by Jacobs, Assistant Cashier, and Exhibit No. "78-A" is a statement from the First Security Company dated December 29th, 1924, received from Willie Mae Woodruff, $14,181.66 being payment for 15,000 Government of the French Republic 77 External Bonds at ninety-four cents and accrued interest to December 29th, 1924. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and it is signed by the First Security Company, and Exhibit No. "78-B" is a debit charge to Willie Mae Woodruff under date of February 26th, 1925, for investment according to instructions $15,000.00 signed by Jacobs, Assistant Cashier of the First National Bank of Los Angeles, and Exhibit No. "78-C" is dated the 10th day of April, 1923, issued by the Bond Department of the First Security Company for $19,880.00, being pay-
350 ment for $20,000.00 Union Oil Company of California, Series D, six percent bonds due 1926 and $99.25 accrued interest, April 10th, 1923, signed by the First Security Company by Schock. I stipulate those instruments were signed by the parties who purported to sign them and the signatures are genuine and that the person who signed them had authority to sign them and they were delivered to the person to whom they were addressed on the dates they bear.

By Mr. Potter:

Q. Mrs. Woodruff, with reference to Exhibit "78-B", the debit slip for investment according to instructions, who gave instructions for that investment?

By Mr. Turnbull: If the Court please, we object to that, that instrument is in writing and speaks for itself.

A. Well all I know, I did not.

By Mr. Potter:

Q. Who was authorized to give instructions then?

A. Mr. Woodruff.

Q. Did you authorize him to so instruct the bank?

A. Yes, sir.

Q. Exhibit No. "78" is a debit slip for $26,500.00 for investment, did you instruct them as to that investment?

A. No, sir, Mr. Woodruff did.

Q. As your agent?

A. Yes, sir.

351 Q. As to Exhibit "78-A", did you receive the $15,000.00 worth of Government of French Republic bonds?

A. No, I did not.

Q. Exhibit "78-B", if the Court please, we will withdraw that exhibit. I believe that completes our exhibits but it does not complete our evidence.

By the Court: All right, we are going to recess now until 9:00 o'clock in the morning, at which time the parties hereto will be back and ready to proceed.

Thereafter and on the 19th day of November, 1940, the above styled and numbered cause came on for further hearing herein at the hour of 9:00 o'clock A. M., the parties hereto being present as heretofore and having announced ready to proceed, the following proceedings were had herein:

MRS. WILLIE MAE WOODRUFF, recalled, having been duly sworn as required by law, testified as follows:

Further Examination.

By Mr. Potter:

Q. You are the same Mrs. Woodruff who was on the stand yesterday?

A. Yes, sir.

Q. Mrs. Woodruff, this may be repetition, I am not positive, Mrs. Woodruff, in 1920 when you let your husband have the first money that is shown by exhibits introduced yesterday, will you tell the Court just the agreement you

352 had with him, just the conversation?

By Mr. Turnbull: I make no objection to the conversation, if the Court please.

By Mr. Potter:

Q. Will you fix the time?

A. 1920 my husband and I had a conversation wherein I agreed to let him handle all of my money that was coming in to buy bonds and good gilt edge securities, and he was not

to speculate with any of my money and he so handled it in trust for me up to the time he went into bankruptcy.

By Mr. Turnbull: I move to strike the answer, the part that says in trust for her, it is an attempt to prove an oral agreement in reference to proxy over $200.00 and not to be handled within a year. The part that he so handled it for me is invading the province of the Court and if allowed to stay in the record would impose upon the objectors and creditors an undue burden and "he so handled it in trust," that is the part I move to strike, that is a conclusion of the witness, as to the conversation, that is all right.

By Mr. Fielder: I can't see any objection to it, it being husband and wife, in regard to a trust relationship between husband and wife and she necessarily does or did trust him.

353 By Mr. Turnbull: If the Court please, your Honor may conclude this was a trust relationship, but as to her conclusion is what I am objecting to.

By the Court: The motion to strike that portion of the answer is sustained.

By Mr. Potter:

Q. What did Mr. Woodruff tell you in this conversation?

A. He told me that he would take my money, if I wanted him to, and invest it for me in good securities and bonds and handle it for me.

Q. And in pursuance to that conversation you did deliver him this money, as shown by these exhibits?

A. Yes, sir.

Q. And you relied upon him doing what he agreed to do on these conversations, did you?

By Mr. Turnbull: I object to that on the ground it is leading and suggestive and calls for an answer of yes.

By Mr. Potter:

Q. Mrs. Woodruff, did you rely on what he said?

A. Yes, sir.

Q. On Mr. Woodruff doing as he agreed to do in this conversation?

A. Yes, sir.

Q. You turned the money over to him relying on him to do that?

A. Yes, sir, I did.

Q. Did you continue to do that over a period of years, Mrs. Woodruff?

A. Yes, sir.

354 Q. Did you ever receive anything back from Mr. Woodruff, in other words, did Mr. Woodruff ever pay you anything back?

A. Yes, he did pay me back a little in 1934.

Q. What did he pay you in 1934, Mrs. Woodruff?

A. He had a piece of property on Hollywood Boulevard that had $46,000.00 taxes on it, due on it, and he said he was going to lose the property and he said you take it up what he owed me, in other words I could take it on what he owed me, he thought it would be a good thing to do and I told him I would take the property and I did, and I paid the taxes on it and credited him with $95,000.00 on the indebtedness to me.

Q. What kind of property was that at the time Mr. Woodruff delivered it to you?

A. A parking lot, it did not have a building on it.

By Mr. Turnbull: The credit is set up in the statement I presume.

By Mr. Potter: Yes, sir, it is.

Q. Mrs. Woodruff, did you subsequent to 1934, did Mr. Woodruff subsequent to 1934 pay you anything?

A. In 1935 he paid me $2,000.00.

Q. How was that payment made Mrs. Woodruff?

A. He sent it to me from Oregon, I received a cashier's check from the bank.

Q. Did he pay you anything subsequent to 1935?

A. He paid my taxes in 1937.

Q. Mrs. Woodruff, did I understand you to say the taxes were paid for the year 1937?

A. I think maybe some of the ten payments, I believe some of it was in 1936 or 1937 and 1938, I don't know

355 the amounts.

Q. Do you have a tax receipt that shows the amount and what was paid?

By Mr. Turnbull: Are you willing to take the tax statement instead of the witness?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: That shows it was paid December 5th, 1936.

A. Yes, sir, December 5th, 1936.

By Mr. Turnbull:

Q. That is the date of the payment?
A. Yes, sir.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Willie Mae Woodruff's Exhibit "79" and I will ask you if that is the evidence of the payment of the taxes paid by Mr. Woodruff for you?
A. Yes, sir.
Q. In what amount?
A. $395.76.

By Mr. Turnbull: My request went as to the date, the date is what I wanted to agree on.

By Mr. Potter: That is correct.

Q. I hand you a tax bill marked Willie Mae Woodruff's Exhibit No. "80", were those taxes also paid by Mr. Woodruff and on what date?
A. On December 5th, 1936, and in the amount of $524.99.
Q. Those are the only credits Mr. Woodruff has on this account?
A. Yes, sir.

Q. Mrs. Woodruff, was there any payment made by Mr. Woodruff to you or for your benefit in 1938?

A. When he borrowed the $25,000.00 on the Ore-
356 gon ranch, he was supposed to make a payment to me.

Q. But did he do that?
A. I don't know.
Q. Did he ever make any payment to you?
A. I don't know.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibits "79" and "80".

By the Court: All right.

By Mr. Potter: That is all at this time.

Cross Examination.

By Mr. Turnbull; If the Court please, I want the record to show my right to proceed and at this time I offer by reference the instrument filed in this Court March 4th, 1940, on behalf of M. E. Heiser and it bears the file mark of your Honor filed March 4, 1940.

By the Court: All right.

By Mr. Turnbull: That is the so-called family claims.

By Mr. Fischl:- If the Court please, may I inquire of counsel the reason therefor, if he is laying a predicate for attorney's fees.

By Mr. Turnbull: No, to show our right to proceed, no application for allowance of attorney's fee has been filed. also offer by reference the order of this Court of August 30th, 1940, signed by G. E. Clark, entitled order in this Court and cause and call your attention to paragraph
357 two thereof, "That the application of the creditor Heiser to file objection to so-called family claim is hereby granted and ask that be in our offer also.

By the Court: All right.

By Mr. Turnbull:

Q. Mrs. Woodruff, I notice in the various exhibits in evidence there are various places which these various letters to you from the First Security Company of Los Angeles and Drake, Riley & Thomas, brokers, and the bank and others address you at 262 South Mariposa Avenue, Los Angeles, California, is that the first house you occupied when you went to Los Angeles?

A. No, not the first one?

Q. What was the address?

A. I do not remember the number just now.

Q. And then you moved to 262 South Mariposa Avenue?

A. Yes, sir.

Q. And then you moved to the Iveness Avenue property?

A. I traded the Mariposa Avenue property.
Q. To try to clean the fen up?
A. Yes, sir.
Q. When did you move to the Mariposa house?
A. In 1920 I think.
Q. You know how long you lived in the Mariposa house?
A. Something over a year.
Q. Then you moved to 262 S. Mariposa Avenue?
A. We came back to Oklahoma and then went back out there.
Q. How long did you stay in Oklahoma?
358 A. About three months.
Q. Then you moved to 262 South Mariposa Avenue?
A. Yes, sir.
Q. How long did you live there, ten years?
A. I would not say, until 1924 or 1925.
Q. Then you moved into the Iverness house in Los Angeles?
A. Yes, sir.
Q. How long did you live there?
A. When in California we lived there.
Q. I noticed your bank account during this period from 1920 you had a bank account in the First National Bank?
A. Yes, sir.
Q. You had that starting about 1920?
A. I believe so.
Q. Did you have any other bank account in Los Angeles from 1920 to 1930 other than the First National Bank?
A. I don't believe I did. Yes, I had a bank account there, it was a different bank, the California Bank.
Q. In Los Angeles?
A. Yes, sir.
Q. You told us yesterday when this money that came from the Carter Oil Company, as shown on Exhibit "2" amounting to $760,750.68, you said as those monies came in from 1920 to 1930 that they were deposited in your bank account?
A. That is correct.
Q. When you say your bank account you mean the First National Bank of Los Angeles?

A. And in Ardmore, Oklahoma.
Q. Did you have a bank account here?
A. Yes, sir.
Q. What bank?
359 A. The First National Bank.
Q. When did you cease to have a bank account there?
A. I had one more or less all the time.
Q. You don't know then that you ever ceased?
A. No, sir.
Q. I notice all the checks in evidence here that you said you paid to Drake, Riley & Thomas or Mr. Woodruff and these other brokerage houses, they were all drawn by check on the First National Bank of Los Angeles, did you ever draw any checks on any other bank that is the basis of this claim of the money you gave to Mr. Woodruff, I believe all of these checks are on the First National Bank of Los Angeles?
A. That is all we could find.
Q. I take it from what I have learned from the checks generally from 1920 to 1930 you were housewife raising your children at that time were you?
A. Yes.
Q. During this time from 1920 to 1930 when you received this $760,000.00 plus, you were a housewife raising your children?
A. Yes, sir.
Q. Did you keep any books yourself?
A. No, sir, Mr. Woodruff kept what books were kept.
Q. Whatever books were kept he kept them, is that it?
A. Yes, sir.
Q. And you don't have those, such as he kept?
A. What is left after they got through figuring up the income taxes in 1933, I have what books were left.
Q. You did not keep any books yourself?
360 A. No, sir, I did not.
Q. You did not keep any books between yourself and Mr. Woodruff only those checks and memorandums such as you have here?
A. That is correct.
Q. How often would you get your return checks after they

were issued and returned to you, how often would you pick up your checks that are now in evidence commencing in 1920?

A. I don't remember.

Q. What is your best judgment on it, we have them here now, you know you must have picked them up some time.

A. I did not handle that matter personally. I did not hardly ever pick them up, Mr. Woodruff would get them part of the time.

Q. Do you know how often they were picked up?

A. No, I don't know.

Q. Every thirty to sixty days?

A. I don't know.

Q. Or once a year?

A. I really would not know. I could not answer the question.

Q. They are in evidence, a great many exhibits are in a form such as Exhibits "79" and "79-B" which I show you, which are debit slips, did you know how much was being checked out of your account. You were charged in Exhibit "78" with $26,500.00, those debit slips came back with your checks?

A. I can't remember exactly as to that. I remember getting Mr. Woodruff's checks, I don't remember these things.

361 Q. Did you know on February 26th, 1925, $15,000.00 was taken out of your bank account, that is one of the exhibits in this case, which is Exhibit "78-B"?

A. I knew he cashed the checks I gave him and knew those were taken out of my account, I did not know every time about this.

Q. Here is also Exhibit No. "78", a deposit slip against your account, I mean a debit slip against your account for $26,500.00 on March 5th, 1923, you can see right here that on or about that time your account was charged with that amount of money and you can see that that amount of money had been taken out of your bank account.

A. I suppose I knew it, as far as I remember I do not remember these debit slips.

Q. I show you Exhibit No. "30", which is a letter addressed to you reading in part as follows: "Complying with

Mr. Woodruff's instructions we are today charging your account with the First National Bank of Los Angeles $14,406.24 being in payment for 15,000 par value New York Central Railroad Refunding and Improvement Mortgage five per cent bonds due two thousand and thirteen at ninety-four and a half and accrued interest", you got that letter, I presume?

A. I did not open it, he was taking care of it for me at that time.

Q. You had drawn a check for $14,406.24 for this New York Central Railroad Refunding and Improvement Mortgage, you had discussed with him concerning the pudchase of that mortgage had you not?

A. Only that he was to buy good stock, I did not know what he bought.

Q. Did you ever know what he bought?

362 A. I knew he was buying is all I knew.

Q. From 1920 to 1930 when these hundreds of thousands of dollars of yours was turned over to your husband, Leonard Woodruff, as evidenced by these various checks, you did not know what he bought?

A. No, I trusted him to use his own judgment.

Q. You did not know if they were Liberty Bonds or Railroad Bonds or Stocks or what they were?

A. I told him to buy good stocks and not speculate with my money was all.

Q. Did you ever find out from 1920 to 1930 that he had bought $40,000.00 of the Fourth Liberty Loan Bonds, did you know he had bought those bonds?

A. I knew he bought some Liberty Loan Bonds, yes, sir.

Q. But this New York Central Railroad Refunding and Improvement Mortgage five percent bonds, did you know that he purchased those?

A. He told me after he would buy but I do not remember and I do not know just what it was. I do not know anything about stocks and bonds.

Q. At the time he would tell you about it, but you do not remember now?

A. Yes, he told me he purchased them, I don't remember what they were.

Q. At this time for the purpose of examining the witness concerning the documents—

By Mr. Turnbull: If the Court please, at this time for the purpose of examining the witness concerning the documents, I offer in evidence a stipulation as to certain evidence to be adduced herein signed by the respective
363 counsel and these copies may be used if counsel desires, and this stipulation is offered as our Exhibit "X" at this time. I want to offer this stipulation and the exhibits "1" to "16" as part of the record.

By Mr. Fieler: I object to the introduction for the reason it does not connect in any way to the claim of this person, the claim of this claimant I mean, it doesn't connect in any way with the claimant's claim. All these other people did have accounts with the Company, as indicated here, but that would not be binding upon this witness or this claimant's claim.

By Mr. Turnbull: I can't understand the attitude of counsel after he entered into this stipulation. He entered into this stipulation and it shows the pages, one to sixteen, that is what I am seeking to introduce.

By Mr. Fieler: If the Court please, we object to it, it is not binding upon this claimant.

By Mr. Casey: The stipulation is not as to the account of Mrs. Woodruff, there is nothing in this except as to the other accounts.

By Mr. Turnbull: It is a stipulation that these are the books of Drake, Riley & Thomas and you ought to be ashamed of yourself to enter into such a stipulation and then repudiate it.

364 By Mr. Fieler: If the Court please, I object to any such implication.

By Mr. Turnbull: It is not an implication it is a direct charge. The stipulation recites that the books of the brokers are Drake, Riley & Thomas, and Mr. Riley was sworn and testified the books were kept in the ordinary course of business, and these are true copies of the originals and may be used for any purpose, the originals may be used for, and in this case Mr. Riley was testifying or did testify the books were regularly kept and pages one to sixteen are the sheets

from that book and may be used for any purpose that the originals might be used for, and I want to show Mr. Woodruff kept a trading account and would buy certain bonds and bought the very bonds we have evidence here that he bought and those bonds were transferred from one account to another account on the books and I also want to show those bonds were sold and the money realized therefrom in 1924.

By Mr. Feiler: In answer to that, if the Court please, I don't dispute that these exhibits or these sheets here can be introduced when Mr. Woodruff is on the stand, insofar as these items apply to other persons' matters in this
365 stipulation, but I don't see how he could connect this claimant with it. How was she bound by that investment made by other persons or any investment made by other persons. If he claims any such stuff as he has stated as to these funds or these accounts, then he can have Mr. Woodruff on the stand to clarify that, but I don't see how it could be binding upon this woman.

By the Court: I see here one sheet shows the account of Mrs. Woodruff.

By Mr. Fieler: Insofar as that goes, yes, sir, but there is nothing to go with it. The stipulation shows that one sheet should go in maybe, I agree to it, insofar as it shows her account.

By Mr. Turnbull: Your objection then that the balance of the exhibits, "1" to "16" are not material in this case?

By Mr. Fieler: They are not applicable to this case.

By Mr. Turnbull: I only have one stipulation as to the entire exhibit.

By the Court: That last sheet would be admissible but the others would not at this time.

By Mr. Turnbull: I must establish that as the books of the Company. I am offering the stipulation which contains the testimony of the two witnesses that they are the books of the Company and may be used in evidence.

366 By Mr. Fieler: As to the last sheet, it may be used, if the Court please.

By Mr. Turnbull: I offer all of them at this time.

By Mr. Fieler: I object to all of them except the last sheet.

By the Court: Objection is sustained.

By Mr. Fieler: I will stipulate this last sheet of this exhibit, regardless of that stipulation, may be introduced in evidence showing the account of Mrs. Woodruff with the Coinpany as therein stated.

By Mr. Turnbull: I still believe this written stipulation is good. At this time I offer to prove by the written stipulation of counsel marked Heiser's Exhibit "1" by stipulation re evidence over the signature of counsel for Willie Mae Woodruff the facts therein stipulated except the stipulation that Exhibits "1" to "16" are true photostat copies of the books and records of Drake, Riley & Thomas and as recited in the stipulation, "May be used with the same force and effect as if the original books were produced", and offer to prove as therein recited, "That it is stipulated that it shall be deemed that Mr. Riley has been sworn and testified and he was one of the members of the firm of Drake, Riley & Thomas, who were stock brokers of Los Angeles, California, that said firm is not now actually operating and dur-
367 ing the time said firm was operating they kept regular books and accounts with their clients; and in said books and accounts which were regularly kept in the ordinary course of business, there appeared the account of Leonard Woodruff, Herman Woodruff, Leonard Woodruff, Jr., and Willie Mae Woodruff. That said books were produced by the witness at the instance or request of Mr. Turnbull, one of counsel for Mr. Heiser, and the witness permitted the photostats of said sheets to be made by Claud Short. It is further stipulated as in said stipulation, "And the witness identified for Claud Short the sheets marked "1" to "16" both inclusive as true and correct copies of the original books of Drake, Riley & Thomas." If the Court please, further down it was stipulated by counsel in this case that Claud Short shall be deemed to have been sworn

and testified he was a resident of Los Angeles, California, and he went to the office and obtained the books of Drake, Riley & Thomas and made sixteen sheets, each of which are attached to this exhibit and marked "1" to "16", and that said sixteen sheets are true and correct photostat copies made from the books of Drake, Riley & Thomas. I offer to make that proof. I make that as an offer of proof.

368 By Mr. Fieler: If the Court please, I object to the offer of proof but do offer to stipulate that so far as sheets "1" to "15" attached to the exhibit he refers to are not applicable to the claimant's claim here, Mrs. Willie Mae Woodruff, with the expection that the stipulation of counsel is that the account appearing on Page 16 in the name of Willie Mae Woodruff is a true account of the books and records of Drake, Riley & Thomas, but has no application other than to show that the account, therein stated is just as stated on the books of the Company and may be offered in place of the original. As to the other part of the exhibit, I object as not being applicable in this case. We have no objection to counsel using it insofar as it is applicable to other matters, and as to the bankrupt, but not as to the claimant here.

By Mr. Turnbull: I take it counsel is resisting my offer. I made an avow, an offer of proof. Then I offer in evidence, if I understand your Honor truly on the objection I made an offer of proof and counsel resists it.

By Mr. Fieler: Yes, except as to sheet No. "16".

369 By Mr. Turnbull: Do you sustain the objection as to the offer to overrule the objection?

By the Court: I sustain his objection to the offer.

By Mr. Turnbull: At this time I now offer in evidence stipulation in re evidence marked Heiser's Exhibit "1" and with it Exhibit No. "16" being the account of Mrs. Willie Mae Woodruff.

By Mr. Fieler: If the Court please, I object to the stipulation as not binding upon the claimant here and consent to the admission of sheet No. "16", as it does apply to claimant's account.

By the Court: I can't see where the other accounts would be admissible.

By Mr. Turnbull: I offer the stipulation and sheet No. "16", if the Court please.

By Mr. Fieler: The written stipulation does not apply to sheet No. "16".

By the Court: The original covers it, but does not cover the account of Willie Mae Woodruff?

By Mr. Turnbull: It shows sixteen sheets attached thereto are true and correct copies.

By the Court: The objection is overruled.

By Mr. Turnbull: We will keep the same exhibit number and only admit it as to the stipulation and sheet No. "16".

Q. Mrs. Woodruff, there has been introduced in evidence the sheet which I show you which is sheet No. "16" and is a copy of the books and account of Drake, Riley & Thomas commencing in 1921, and ending some time in 1924. I believe I will ask you did you know there was an account with Drake, Riley & Thomas in your name in 1924?

370

A. I knew Mr. Woodruff was buying bonds and stocks from them.

Q. And you knew you were making the actual checks in favor of Drake, Riley & Thomas?

A. Sometimes they were filled out to them and sometimes they were in blank.

Q. And when they came back they were filled out in favor of Drake, Riley & Thomas, is that true?

A. I do not remember as to whether I knew that or not.

Q. Did you know in 1921 there was an account in your name with Drake, Riley & Thomas?

A. I did not.

Q. Did you know it in 1922?

A. I don't remember knowing it at all. Mr. Woodruff handled my business and I did not know anything about any account.

Q. Did you know it in 1923?

A. I knew he was buying bonds and stocks is all I knew.

Q. You knew there was an account in your name with Drake, Riley & Thomas in 1924?

A. I don't remember ever knowing it, no, sir.

Q. You knew it or did you know it at any time during 1921 to 1924?

A. No, sir, the only thing I can answer I knew that Mr. Woodruff was buying bonds and stocks and this company was in business and I probably knew he was dealing with them to some extent, but I never knew anything about any account in my name at any place.

371 Q. You knew they were keeping an account in your name then did you?

A. No, sir, I did not know that at any time.

Q. That is true in 1929, '21 to 1924, as far as you know, is that right?

A. Yes, sir.

Q. Did you know anything concerning the actual checks which you had given which are now in evidence here to Drake, Riley & Thomas, anything concerning that money other than the fact it was being used to buy stocks and bonds for you?

A. No, I did not know anything about it only it went to buy stocks and bonds.

Q. That is all you knew about it?

A. Yes, sir, that is all.

Q. Did you know who Drake, Riley & Thomas were?

A. I knew they were selling bonds and stocks.

Q. You knew they were a stock brokerage house?

A. Well, I don't know that that is necessary to know.

Q. Did you know in 1921 Mr. Woodruff was buying and dealing with Drake, Riley & Thomas for his account?

A. Well, I knew he bought some stocks and securities, yes.

Q. Bought what?

A. Bonds and stocks.

Q. Did you know that in 1921 whether or not there were accounts in the books of Drake, Riley & Thomas' office in the name of your daughter Margaret?

A. Well, he told me he was buying bonds and stocks for the children.

Q. Your children and his children?

372 A. Yes, sir.

Q. Howard and Margaret and Leonard Jr., were the three children?

A. Yes, sir.

Q. Which is the oldest?

A. Howard.

Q. When was his birthday or when was he born?

A. He was born the 19th of March, 1916.

Q. And Margaret was born when?

A. The 14th of March, 1918.

Q. And Leonard, Jr.?

A. He was born the 28th of February, 1921.

Q. When he said he was buying stocks for the children you understood him to mean all three children, did you, Leonard, Margaret and Howard?

A. Perhaps he bought some before Junior was born, I don't know, and those would be for Margaret and Howard.

Q. Exhibit "22" shows a transfer of $5,000.00 from your account to the account and credit of Herman Woodruff, you said that money was sent by you to Herman Woodruff at, for and at the request of Leonard Woodruff?

A. Yes, sir.

Q. Was that your money you sent to Herman Woodruff?

A. Yes, sir.

Q. Did you get a promissory note from Herman Woodruff for it?

A. No, sir.

Q. Did you get the promise your husband would give you bonds for it?

A. Yes, sir.

373 Q. Did he give you a bond or any kind of stock at the time you sent the money to Herman Woodruff?

A. No, sir.

Q. Did he give you any bond thereafter?

A. No, sir.

Q. Some of these checks which are in evidence here in support of your claim are to Slaughter, Anderson & Fox, or Anderson & Fox, did you know at the time the checks were made as to the business of Slaughter, Anderson & Fox?

A. They sold bonds and stocks.

Q. At Los Angeles, California?

A. As far as I know, yes, sir.

Q. At the time you gave the checks, you gave them to purchase bonds for yourself?

A. Yes, sir.

Q. You got none of the bonds at all?

A. No, sir.

Q. And none of the stock at any time, is that right?

A. Yes, sir, that is right.

Q. At the time you went to California in 1920, you were the wife of Leonard Woodruff and have been ever since?

A. Yes, sir.

Q. I show you one portion of Exhibit "60" and Exhibit "60" is five of your checks and one portion of which is a check dated December 3rd, 1926, a check for $600.00 in favor of Jack Thomas. You testified yesterday, as I remember it, that all of these five checks were given to Mr. Woodruff and he promised to give you bonds for the money, don't you know Jack Thomas was an employee of Mr. Woodruff on his Oregon ranch and that check went to pay part of the labor bill up there, a debt due Mr. Thomas?

374 A. Yes, and Mr. Woodruff told me he would give me the money back or bonds for it.

Q. Did he tell you that Jack Thomas had a bill for labor at the ranch?

A. He never asked me for any money except when he promised to return bonds and good securities to me for it.

Q. He told you on these occasions he would give you bonds for the money?

A. Yes, sir, and good securities.

Q. And on each occasion he told you that he did not keep his promise, is that right?

A. He did not give me the bonds, he always had the money to pay me back and always told me I need not worry about it, that is what he told me when I would ask him about it.

Q. Did you know who Jack Thomas was in 1926 at the time you gave this check?

A. Yes, sir.

Q. And you knew you were writing this check to pay for labor on the ranch?

A. Yes, sir.

Q. And Mr. Woodruff told you he owed Jack Thomas for labor and wanted the money to pay him?

A. Yes, that he owed him the money, of course, he would not have paid him if he had not owed him.

Q. You knew, did you not, when you gave Mr. Woodruff the $40,000.00 check which is in evidence here that he actually bought United States Liberty Bonds of the Fourth Series for that $40,000.00 did you?

A. He told me he bought some Liberty Bonds.

375 Q. This $40,000.00 check, this particular $40,000.00 worth of Liberty Bonds that you testified yesterday and identified the money that went into the bonds, I show you Exhibit No. "61", which is a debit slip of $40,136.55, now do you know that money was to buy Liberty Bonds, did you, $40,000.00 worth of Liberty Bonds?

A. He did not specifically tell me that he was going to buy Liberty Loan Bonds with that money.

Q. That is a debit slip from your bank for $40,136.55?

A. Yes, sir.

Q. The bank sent you that debit slip?

A. I got it from Mr. Woodruff's account the first time I ever saw it.

Q. When was the first time you knew the Liberty Loan Bonds were purchased by that money?

A. Well, I can't remember, I could not tell you that.

Q. Did you know in 1922 that he used that $40,000.00 to purchase $40,000.00 worth of Liberty Loan Bonds of the United States?

A. No, sir, I did not know it.

Q. You did not know it?

A. No, sir.

Q. Did you ever ask him to deliver to you the Liberty Bonds?

A. No, sir.

Q. Or any Liberty Loan Bonds?

A. No, sir, I never did.

Q. You know now, don't you, from these exhibits "61", "61-A" and "61-B", he did buy $40,000.00 worth of United States of America Fourth Liberty Loan Bonds of 1938, due in 1938 at $99.94 with that money of yours?

376 A. Yes, sir, I know that shows it, yes, sir.

Q. Do you know what became of the $40,000.00 Liberty Loan Bonds?

A. No, I do not know.

Q. Did you ever see them?

A. No, I don't remember ever seeing them.

Q. Did you ever give any instructions for their sale?

A. No, I did not.

Q. You have produced here and have had marked as your exhibits "62" and "62-A" first a check in favor of Drake, Riley & Thomas in the sum of $8,984.64, and Exhibit "62-A" to which the check is attached is a sales slip on Drake, Riley & Thomas' letterhead showing sold to Willie Mae Woodruff $15,000.00 Pacific Gas & Electric Corporation bonds, the interest is 5½ percent and the price was ninety-eight, that is $14,700.00 and interest accrued four months and eleven days $300.30, making a total of $15,000.30, did you ever see those Pacific bonds?

A. No, sir.

Q. Did you ever give any direction for their sale?

A. No, sir.

Q. Or the money, did you ever get the money for them?

A. No, sir, I never did.

Q. Did you know at or about the time you gave the check marked Exhibit "62" to Drake, Riley & Thomas, that money would be used to purchase Pacific Gas & Electric Corporation bonds?

A. No, sir.

Q. When did you find out that money was used to purchase those bonds?

377 A. I signed the check to Mr. Woodruff, and Mr. Woodruff filled it out, I did not know what kind of bonds he intended to buy.

Q. You did not know what kind of bonds he intended to buy but you had given him that check in blank, the figures therein stated and the name Drake, Riley & Thomas, are, as you say in his handwriting?

A. Yes, sir, that is right.

Q. The only handwriting on that check for $8,984.64 is your signature thereto, is that right?

A. Yes, sir.

Q. You gave it to him in blank?

A. Yes, sir.

Q. And he filled out the amount and the payee?

A. Yes, sir.

Q. When the check came back you discovered it had been made out for $8,984.64 in favor of Drake, Riley & Thomas?

A. I never saw the cancelled check. I saw them, looked at them, and I know I never saw this one.

Q. Did he take care of all of your banking business?

A. Yes, sir.

Q. And like a good wife he asked you to sign a check in blank and you signed it?

A. Yes, sir.

Q. You said you quite frequently signed a check in blank?

A. Only when he was going to invest it for me.

Q. Except in cases like this you never did?

A. He told me he would give me bonds in return for the money.

Q. And you did find out afterwards he did buy $15,000.00 of Pacific Gas & Electric Corporation bonds for this check for $8,984.64, which was made payable to Drake,
378 Riley & Thomas, did you not, you found that out?

A. When getting these accounts all straightened up or trying to, I did, yes, sir.

Q. Did you ever see the books?

A. No, sir, I never did.

Q. Did you ever direct that those bonds be sold to repay you your money?

A. No, sir, I never did.

Q. Were they ever sold?

A. I would not know.

Q. Did you ever see the books of Drake, Riley & Thomas concerning your account?

A. I never did.

Q. You never have?

A. No, sir.

Q. Mr. Woodruff then had disposed of the securities, the stocks and bonds after they were purchased and before you found out what he had been buying?

A. Yes, sir.

Q. With respect to these securities which were registered in your name did you ever authorize them to be taken out of your name?

A. No, sir, I never did.

Q. You know how he accomplished the sale of the registered bonds?

A. No, I never refused to sign anything he asked me to sign, I don't know whether I signed them or whether he did, and I do not know what I did sign.

Q. If they were signed by you then he came around and asked you to sign papers and you signed them?

379 A. Yes, sir.

Q. Was that true from 1920 to 1930?

A. Yes, sir.

Q. Is that the reason why so many of these exhibits from "1" to "78" are in many instances filled out in his hand writing except your signature?

A. Yes, sir.

Q. Is that the same reason you don't know about a great many of these transactions as to the deals you signed your name where he asked you to and when he asked you to?

A. That is correct.

Q. During any of the time after the first time you spoke to him in 1920 about investing your money in bonds or gilt edge stocks, did you tell him of any securities he had purchased in your name were speculation and not gilt edge securities?

A. No, I did not.

Q. Exhibit No. "32" is a check for $14,000.00, dated October 30th, 1923, you identify that as your signature, do you?

A. Yes, sir.

Q. And you say that was used to pay for one of the ranches in Oregon taken in the name of Mr. Woodruff?

A. Yes, sir.

Q. The ranch was not taken in your name or jointly with him at all then?

A. No, sir.

Q. It is in his name?

A. Yes, sir.

Q. That is one of the pieces of property in his name?

A. Yes, sir.

380 Q. It is listed as the Oregon ranch?

A. Yes, sir.

Q. There was about five or six purchases in Oregon before you got this ranch together?

A. Several different pieces of land.
Q. And they comprise now the complete ranch?
A. They are still separated I think.
Q. Are they widely separated or in the same County?
A. I don't know as to that.
Q. You have not been there?
A. They are not very far apart.
Q. This Exhibit "32" is a check of October 30th, 1923, and it shows it was paid and shows paid November 2nd, 1923, if you will notice, you said that $14,000.00, Exhibit "32" went to pay for one of the ranches and at the time you gave the draft to Mr. Woodruff, at his request, he promised thereafter to give you bonds for the money?
A. Yes, sir.
Q. What did he say as to the bonds he would give you for the $14,000.00, what kind of bonds?
A. He did not tell me.
Q. That was at the time you made the draft in 1923, at the time of this conversation, and this promise, was that at the time of the conversation, at the time of the writing of the draft, is that when he told you he would give you bonds for this amount?
A. Yes, sir, at the time I gave him the draft.
Q. You know whether or not thereafter he bought bonds in your name or otherwise for that $14,000.00?
A. No, I don't know.
381 Q. You never got any bonds for that money?
A. No, sir, I never.
Q. For that reason you still contend he owed you that $14,000.00 is that it?
A. Yes, sir, he does.
Q. You have not been repaid this $14,000.00?
A. No, sir, I have not.
Q. With respect to Exhibits "33" and "34", they too are drafts, and Exhibit No. "33", is a draft for $7500.00 and Exhibit No. "34" is for $1500.00 to the First National Bank of Lakeview, Oregon, that $7500.00 and the $1500.00 and the $14,000.00, they were all used to buy the ranch with?
A. Yes, sir.
Q. Did your husband ask you for $9,000.00 to buy cattle with?

A. He asked me if he could use it and give me bonds in place of it.

Q. You had this money in the First National Bank of Los Angeles?

A. Yes, sir.

Q. And you said he was going to buy cattle to stock the Oregon ranch with?

A. Yes, sir.

Q. Did he tell you how many cattle he wanted to buy?

A. Yes, sir.

Q. Did he say all of this $9,000.00 was to be used for that purpose?

A. Yes, sir.

Q. You drew these two checks here or these two drafts for that amount of money?

382 A. Yes, sir.

Q. It was the time these drafts were drawn and the date they bear, October 29th, 1923, you had the conversation with him about giving you bonds in lieu thereof?

A. At the time he got the money.

Q. When do you consider he got the money, the day the drafts were drawn, they are both paid, they were drawn on October 29th and they are marked paid on November 5th. The drafts were both paid, now did you have the conversation at the time you signed the drafts and gave them to him, is that what you mean?

A. I had the conversation when he got the drafts, before I gave him the drafts.

Q. And he told you what he wanted with the money?

A. Yes, sir.

Q. With respect to the drafts, was it the day you gave him the drafts or the day before you had this conversation with him?

A. Probably the day before I had the conversation.

Q. That would be on October 28th then?

A. Perhaps it was.

Q. What is your best judgment as to that?

A. It might have been the same day, I would not say.

Q. The same day or the day before?

A. Yes, sir.

Q. And he said he wanted $9,000.00?

A. To buy cattle.

Q. He said he wanted $9,000.00 to buy cattle?
A. Yes, sir.
Q. And you gave him these two drafts?
383 A. Yes, sir.
Q. What else did he say about the repayments?
A. He said, "I will use your money to buy cattle with and in return I will give you bonds when I get back to Los Angeles".
Q. At that time you were at Lakeview, Oregon?
A. Yes, sir.
Q. Were you living on the ranch at the time?
A. Lakeview is not the ranch, the ranch was at Ft. Clenet, he bought the cattle over there.
Q. The Oregon ranch is how far from Lakeview?
A. Fifty or sixty miles.
Q. And he said, "When I get back to Los Angeles, I will give you bonds for this money"?
A. Yes, sir.
Q. How soon after these drafts were written did you go back to Los Angeles?
A. In September, I think.
Q. This was in October when you gave the drafts, did you go back to Los Angeles that year?
A. Did not stay there very long, it was too cold.
Q. You think you went back before Thanksgiving?
A. We might have come to Oklahoma.
Q. When did you get back to Los Angeles.
A. I don't remember.
Q. You did not go back right then?
A. No, I don't remember, we could have.
Q. When you got back to Los Angeles did he give you any bonds for this money?
A. No, sir.
Q. He never did give you any bonds for these ex-
384 hibits "33" to "39", did you ever get any bonds for those?
A. No sir.
Q. Or did you receive any repayment for this money?
A. No, sir.
Q. Did you ever ask him for bonds when you got back to Los Angeles?

A. He said he would have them for me, I presume he put them in my name and I assumed he had then.

Q. Since that time have you ever asked him for them?

A. Well, no, he said he would get them for me.

Q. Since you married to Mr. Woodruff you have not engaged in any business of your own other than leasing this land for oil?

A. No, sir.

Q. You have not engaged in any trade or commerce?

A. Until I got the property in 1934.

Q. The Iverness Street property?

A. Yes, sir.

Q. That is the corner on the South side of Hollywood Boulevard?

A. Yes, sir, that is it.

Q. And the Iverness Street property is a residence?

A. Yes, sir.

Q. No business conducted there?

A. No, sir.

Q. Never has been any business conducted in connection with the Iverness Street property?

A. No, sir.

Q. And the Iverness Street property has a drug store on the corner?

A. Yes, sir.

385 Q. Up to 1924 you had no business did you?

A. No, I did not.

Q. You had no business experience?

A. No, sir, I had not.

Q. You were not in any kind of business up to 1934 up to the time you bought the Hollywood Boulevard Street property?

A. No, sir.

Q. And it has a drug store on the corner there now?

A. Yes, sir.

Q. There was introduced here yesterday testimony concerning the purchase of bonds of the French Republic, did you ever discuss with Mr. Woodruff the purchase of those bonds?

A. No, sir.

Q. Did you know he bought them?

A. No, sir.

Q. Do you know if they were ever in your name?

A. He might have told me they were, I don't know.

Q. You know he did actually buy them?

A. I don't remember, you may have the check there to show it but I do not remember anything about it.

Q. You know how many bonds of the French Republic he bought independent of the records?

A. No, I don't know anything about it.

Q. Mrs. Woodruff, I want to be sure about one thing, all of the money that you deposited in the First National Bank of Los Angeles and the money you deposited in the First National Bank of Ardmore, that was the money that you got from the Carter Oil Company?

A. Yes, sir.

Q. Was that the only source from which you got
386 any money at all?

A. Yes, sir.

Q. Mrs. Woodruff, Exhibit No. "2" shows at the bottom of it $760,750.68, you think all of that money came to you?

A. Yes, sir.

Q. That is the money you put in the two bank accounts?

A. Yes, sir.

Q. Now counsel asked you this morning when you first started lending Mr. Woodruff money, when you first started letting him have money for investment purposes he told you it would be put in bonds and gilt edge securities and you told him you were not speculating with your money, is that right?

A. Yes, sir.

Q. Then when did you put up the first money?

A. Right then.

Q. That is when you put up the first money then?

A. Yes, sir.

Q. Where was that conversation?

A. When we lived in the Figueroa house.

Q. In Los Angeles?

A. Yes, sir.

Q. And you had similar conversations at each time you put up money and at the time you put up the $40,000.00 and

at the time he wanted to buy the Liberty Loan Bonds he continued to tell you the same thing?

A. What is that?

Q. In May of 1922, May 18th, $40,136.55 was checked out of your bank account as shown by Exhibit "61" and "61-A" and "61-B", which I show you, those exhibits show
387 the bonds were bought from the First Security Company and it has been stipulated they were controlled and owned by the First National Bank of Los Angeles, at the time you gave this check, did you have the same conversation with your husband, Leonard Wooward, in other words, did he agree that he would use that money to buy these particular bonds?

A. He said he was going to buy bonds and wanted me to sign a check.

Q. And that happened on or about the time you gave him the money in 1922, about the same time?

A. Yes, sir.

Q. You had the conversation at the time you gave him the money?

A. I had the conversation beginning about 1920.

Q. I know about that.

A. I never changed it after that in any way.

Q. If you had any conversation with him concerning the matter after that it was always approximately the same thing?

A. Yes, sir.

Q. You think you had the same general conversation with him at the time you put up the $40,136.55?

A. I did not have any at that time that I remember other than he said he was going to buy bonds and asked me to sign a check.

Q. That was on the date shown here in May of 1922?

A. Yes, sir, the date he bought the bonds, about that time.

Q. That occurred at Los Angeles, did it?

A. Yes, sir.

Q. Exhibit No. "63" is a check drawn on the First
388 National Bank of Los Angeles for $64,000.00 dated March 14th, 1922. I know in answer to a question

yesterday you said you gave Leonard Woodruff that you actually handed it to him?

A. Yes, sir.

Q. You said that check was also given according to his statement to buy bonds for you?

A. Yes, sir.

Q. And you had that conversation when?

A. At about that time.

Q. And where were you?

A. In Los Angeles.

Q. California.

A. Yes, sir.

Q. That is when the check was made?

A. Yes, sir.

Q. And that is where the check was written?

A. Yes, sir, he said he was going to buy a large amount of bonds, I don't know if he filled it out at the house or somewhere else.

Q. In Los Angeles?

A. That is his handwriting. I often signed checks in blank.

Q. Do you know if he bought anything with the $64,000.00?

A. He told me he was going to.

Q. Do you know if he bought anything with it?

A. No, sir.

Q. He told you he was going to use this $64,000.00 to buy bonds with and you say he probably filled this check out at the house?

A. Probably in town, yes, sir.

389 Q. In Los Angeles?

A. Yes, sir.

Q. That was in California?

A. Yes, sir.

Q. You don't know if he ever bought any bonds with this money or not, do you?

A. No, I don't know personally.

Q. Yesterday you told your own counsel when he used it for anything other than what he said he was going to use it for, you knew what it was actually used for?

A. No, I don't know as to that.

Q. It was payable to the First National Bank, do you know what the money actually went for?

A. No, sir, I do not.

Q. Have you been able to find out?

A. No, sir.

Q. You don't know whether he bought bonds with it or not?

A. No, sir, I don't know.

Q. Exhibits "67" and "68" are two checks and Exhibit "67" being a check for $18,000.00 payable to the First National Bank of Los Angeles, and "68" being a check for $9,415.66 payable to the First National Bank of Los Angeles both dated in 1924, I hand them to you. You told us yesterday the purpose for which you gave the checks, first you said you actually handed the checks to Mr. Leonard Woodruff, and the purpose for which you gave them was to buy bonds, did you have a conversation with Leonard Woodruff, your husband, at the time you made out the checks and handed them to him?

390 A. About these particular checks you mean?

Q. You said yesterday when you handed him the particular checks you said in answer to your counsel's question you said the purpose in delivering these checks to Mr. Woodruff was to buy bonds?

A. Yes, sir.

Q. Did you have a conversation with Mr. Woodruff at the time you delivered these checks in regard to buying bonds?

A. Yes, sir.

Q. Where was that conversation had, at Los Angeles?

A. Yes, sir.

Q. That is where you were when the checks were made out, is that right?

A. Yes, sir.

Q. Did you ever get any bonds for those checks?

A. No, sir.

Q. Do you know if he used the money to buy bonds with?

A. He told me he did.

Q. Did you ever see the bonds.

A. No, sir.

Q. Now I asked you early this morning about Exhibits

"67" and "68", I mean I asked you about Exhibit "78" and Exhibit "78-B" and "A", I asked you about that money. I show you the exhibits, one is a debit for $26,500.00 and one for $15,000.00, they are dated one in March, the 5th I believe it is, 1923, and one is dated February 26th, 1925, you were asked yesterday about those exhibits particularly Exhibit "78-B" which is dated February 26th, 1925, and you said that your attention was called to the fact that this recital on the instrument, "For investment according to instructions" and you said you had
391 left the instructions up to Mr. Woodruff, Leonard Woodruff?

A. That is correct.

Q. Did you have a conversation with him at the time that money was checked out of your bank account, that it was to be invested for you?

A. I don't remember of that date.

Q. You remember the conversation you had with him in substance, you said yesterday, "My understanding this money was used to purchase the French Republic 77 External Bonds, I am quite sure I am right as to that", Whatever conversation you did have you had it at the time the money was used, did you?

A. I did not always have a conversation with him at the time I gave him a check.

Q. Sometimes he just asked you for the money?

A. Yes, sir.

Q. Where were you when these two debits were checked out of your bank account?

A. I don't remember.

Q. How old were you in 1920?

A. In 1920?

Q. Yes.

A. I was 20 years old.

Q. 20 years old?

A. I think so.

By Mr. Turnbull: That is all just now.

By Mr. Potter:

Q. Mrs. Woodruff, I will ask you if Mr. Woodruff had a great number of bonds during the time from 1920 to 1930?

392 A. Yes, sir.

Q. Did he have a good number of bonds of his own?

A. Yes, sir.

Q. Let me ask you too, on the occasions when Mr. Woodruff came back to you, after you had given him money for the purpose of buying bonds, and he came back and would tell you he had bought bonds, would he tell you what they were?

A. He said they were good gilt edge securities.

Q. And would he tell you where they were?

A. He said they were in the safe deposit box.

Q. In the bank?

A. Yes, sir.

By Mr. Potter: That is all.

By Mr. Turnbull:

Q. Mrs. Woodruff, we have here Heiser's Exhibit No. "1" marked for identification which has been refused as evidence in this matter by the Court, but it has been admitted as to the stipulation and as to Exhibit "16" only.

By Mr. Potter: Just a minute Mr. Turnbull, I would like to ask another question.

By Mr. Turnbull: Go ahead.

By Mr. Potter:

Q. Mrs. Woodruff, do you know how much of the time Mr. Woodruff was outside of the State of California from 1920 to 1939, approximately?

A. He was out of the State a good deal of the time.

Q. Would you say twenty-five percent of the time?

By Mr. Turnbull: We object to that as leading.

By Mr. Potter: Withdraw it.

393 Q. Can you tell the Court approximately how much of the time he was out of the State of California?

A. I would say about half of the time, I would think.

By Mr. Potter: That is all.

By Mr. Turnbull:

Q. When did you go to California, in 1920, what part of the year?

A. In December I believe, no, it must have been in 1919, I believe it was.

Q. You were there in 1920?

A. Yes, a part of the time.

Q. You rented a house on Figueroa Street?

A. My mother and father-in-law bought a house.

Q. You lived in that house how long?

A. I am sorry to say—

Q. How long did you live in the house on Figueroa Street?

A. Well, I think Mr. Woodruff went to Oregon during that time.

Q. When did he go to Oregon, in 1920?

A. I don't remember the month or the year that he went there.

Q. How long did he stay in Oregon in 1920, how much of the time?

A. Six or eight weeks.

Q. He was here the rest of the year in 1920. I will show you Exhibit "6", it is Exhibit "7", six checks all dated in the year 1920, all issued on the First National Bank of Los Angeles, the first one of them was issued in July, does that refresh your memory as to where Mr. Woodruff was at the time, they were cashed, were they not?

A. This one is July.

394 Q. Yes, and it is July 13th and this one is the 22nd?

A. I don't know the month he was gone.

Q. These checks did not go through any outside clearing house, does that refresh your memory, Mr. Woodruff was in Los Angeles in 1920?

A. Yes, I think he was there.

Q. I show you another check, part of Exhibit "7", dated September 14th, 1920, does that—that check is not cashed outside of Los Angeles, would that refresh your memory as to where he was in September if he was in Los Angeles?

A. Yes, the check shows he was here.

Q. And on October 20th here is another check endorsed by him and cashed locally, does that refresh your memory that he was in California at that time in 1920?

A. Could he have mailed that check to Los Angeles?

Q. I am asking you if it refreshes your memory.

A. No, it don't, I don't know, I do not know what time he was gone or when he came home.

Q. I show you a check dated in November of 1920, does that refresh your memory at all, if you gave him the money at the time?

A. I signed the check, I know that.

Q. That doesn't refresh your memory as to where he was?

A. No, sir.

Q. And the check in December of 1920 endorsed by him, does that refresh your memory any?

A. No, it does not.

Q. Mrs. Woodruff, yesterday you testified at the time those checks were made out by you, you had a conversation with him and he told you he would buy bonds with the money?

395 A. Yes, sir.

Q. That conversation occurred at the time you gave him the checks?

By Mr. Potter: If the Court please, he asked that question about fourteen different times.

By Mr. Turnbull: There is another reason for it now.

Q. Can you answer the question?

A. These checks do not refresh my memory.

Q. You said yesterday when the checks were given each time he said he would buy bonds with them?

A. Yes, sir, that is what he told me.

Q. When he went to Oregon did you go with him?

A. No, sir.

Q. Did he talk to you at each time when you gave him these checks in July, September, October and November, and he was in Oregon part of the time and Los Angeles part of the time?

A. He was probably in Los Angeles on all those dates.

By Mr. Fieler: If the Court please, I object to the introduction of all of this evidence because there is no issue presented as to that. The burden is upon the other side to

establish the status, it is not up to us to establish residence, that is all immaterial in this hearing.

By the Court: The testimony was brought out by you, go ahead.

By Mr. Turnbull: Counsel mean to say that the witness can say that the man was out of the State for ten
396 years and I can't ask where he was?

By the Court: Go ahead.

Q. I show you exhibit No. "9"; dated July 22nd, 1920, for $10,384.23, made payable to Drake, Riley & Thomas and endorsed by Drake, Riley & Thomas, and you testified yesterday at the time you gave that check you gave it in blank and had a conversation with Mr. Woodruff and he told you he would buy bonds with it, yet you had never seen the bonds, when did you have that conversation with him with respect to that check, the date shown in that check?

By Mr. Potter: We object to that, Mrs. Woodruff testified yesterday that she delivered those checks to him in California on the date each check is given.

By Mr. Turnbull: When these checks were given on a California bank then they were in California, is that right?

By Mr. Potter: Yes, and if they were given in Oklahoma they were in Oklahoma.

By Mr. Turnbull: All right, I will accept that as a stipulation.

By the Court: That would be immaterial it seems, there was a check given here yesterday and cashed here.

By Mr. Turnbull: That is true but we feel he was not out of California much more than two years during that entire time.

By Mr. Potter: He lived here two years at one time and spent years and years and months and months
397 out of the State.

By Mr. Turnbull:

Q. Did Mr. Woodruff use the train or plane service?
A. The train.

Q. Did you ever know him to fly any?
A. No, sir.

By Mr. Fieler: Your Honor please, it may be necessary for me to leave at the conclusion of this hearing due to the fact I came out of a sick bed to come over here to be present.

By the Court: Are you through with this witness?

By Mr. Fieler: I think so, your Honor. And at this time I would like to get permission of the Court subject to any further examination of any witness on cross examination for the bankrupt to present the law applicable to this issue in answer to their claim as set up in their statement with respect to the relationship of the parties.

By Mr. Turnbull: I want to present the evidence before we hear any argument.

By the Court: Which claim?

By Mr. Fieler: This Willie Mae Woodruff claim.

By Mr. Turnbull: I object to counsel attempting to argue the law of the case in the middle of my proof, I do not think counsel has a right to argue the law in the middle of the proof.

398 By Mr. Fieler: If the Court please, I said subject to your proof and any other evidence you desire to offer.

By the Court: I don't think it is a proper time to take that up.

By Mr. Fieler: I want to give my opinion of the law and not make it too long.

By the Court: I will be glad for you to submit it by brief.

By Mr. Fieler: I will be glad to do that, if the Court please.

(Witness excused.)

By Mr. Turnbull: If the Court please, this Court can take judicial knowledge of the respective State Statutes of

the State of California and Oklahoma. I don't expect counsel to agree with me, I will ask you to take judicial knowledge of the following State Statutes—I am offering certain proof by way of the Statutes.

By Mr. Potter: I have not rested as yet, if the Court please.

By Mr. Turnbull: I beg your pardon, that is right.

(And here the testimony of Howard Woodruff was presented to the Court.)

299 By Mr. Turnbull: If counsel finishes with Mrs. Willie Mae Woodruff this afternoon I will require the presence of the bankrupt. I want to examine the doctor to see why he is not here now.

By Mr. Potter: Will you take a professional statement?

By Mr. Turnbull: If the doctor will come here and testify, yes, sir. The bankrupt is deliberately absenting himself from this court room.

By Mr. Fischl: That is an untrue statement deliberately made.

By Mr. Turnbull: No, that is not either.

By the Court: It is now 12:00 o'clock and we will recess until the hour of 1:30 P. M.

(Whereupon court recessed until the hour of 1:30 P. M.)

Thereafter and on the 19th day of November, 1940, at the hour of 1:30 P. M., the above styled and number cause came on for further hearing, the parties hereto being present as heretofore when the following further proceedings were had herein:

By Mr. Potter: If the Court please, on the claim of Willie Mae Woodruff, I desire at this time to place Mr. Woodruff on the stand. However he is not in any condition to come to the stand and if necessary I will produce the doctor and he will testify, so he apprises me that Mr. Wood-

ruff is not able to come down this afternoon but will
400 be able to come down in the morning, he is running
temperature at this time and if it is agreeable I will
place him on the stand in the morning.

By Mr. Turnbull: I don't make any objection to letting the matter go over until morning, I don't object to that. However I want him here as to this claim and also the children's claim. On the first of November I sent a telegram and requested the presence of Mr. Woodruff, the bankrupt and also telegraphed your Honor saying that I wanted counsel requested to produce him and my wire was answered saying that the bankrupt would be present, and they did have him here the first day. The first day we did not have any occasion to use him but if he will be here in the morning, that is fine.

By Mr. Potter: I would like to suspend on the Willie Mae Woodruff matter for the present and I would like to take up the claim of Ida Belle Woodruff.

By the Court: Well, I believe we will adjourn until in the morning at 9:00 o'clock.

(Whereupon Court recessed until November 20th, 1940, at the hour of 9:00 A. M.)

401 Thereafter and on the 20th day of November, 1940, at the hour of 9:00 o'clock A. M., Court met pursuant to recess heretofore taken, the parties hereto being present as heretofore, after which the following further proceedings were had herein:

(Here the claim of Ida Bell Woodruff was taken up and certain proof offered thereon.)

(After which the claim of Herman Woodruff was taken up and certain proof offered thereon.)

(After which Court recessed until the hour of 1:30 P. M. this day.)

Thereafter and on the 20th day of November, 1940, at the hour of 1:30 P. M., Court met pursuant to recess taken for the noon hour, after which the following proceedings were had herein:

(And here the testimony of Leonard J. Woodruff was heard as to the claim of Howard Woodruff.)

(Also the testimony of Leonard J. Woodruff as to the claim of Leonard Woodruff, Jr., was heard.)

By the Court: As I understand it, you have now finished with the claim of Howard Woodruff, Leonard J. Woodruff, Jr., and Margaret Woodruff?

By Mr. Potter: That is right.

By the Court: Have you finished the testimony on the claim of Herman Woodruff?

402 By Mr. Potter: Yes, I think so.

By the Court: These four claims then are ready for decision.

By Mr. Turnbull: Yes, that is true, however I would like to be heard on those matters.

By the Court: Very well. We are now going to recess until Friday morning at the hour of 9:00 o'clock, which will be November 22nd, and you will be back at that time.

(Whereupon Court recessed until November 22nd, 1940, at the hour of 9:00 o'clock.)

Thereafter and on the 22nd day of November, 1940, Court met pursuant to recess heretofore taken, the parties hereto being present, after which the following further proceedings were had herein:

LEONARD WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Examination by Mr. Potter:

Q. Your name is Leonard Woodruff?
A. Leonard J. Woodruff.
Q. You are the debtor herein, are you Mr. Woodruff?

A. Yes, sir.
Q. You are the husband of Willie Mae Woodruff?
A. Yes, sir.
Q. She is a claimant in this proceeding?
403 A. Yes, sir.
Q. How old are you, Mr. Woodruff?
A. I am 53.
Q. Where were you born, Mr. Woodruff?
A. In Southwest Iowa.
Q. Did you later move to Oklahoma?
A. Yes, sir.
Q. And you married in Oklahoma?
A. Yes, I married in Ardmore.
Q. When Mr. Woodruff?
A. In 1914 to my present wife.
Q. At the time you married did you own property in Oklahoma?
A. Yes, sir.
Q. Was any of that property conveyed to you by Mrs. Woodruff?

By Mr. Turnbull: Are you referring to the deeds in evidence?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: That is objected to on the ground it is already in evidence.

By Mr. Potter:

Q. Mr. Woodruff, did the property you owned in Oklahoma produce oil or gas?
A. At a later time, yes, sir.
Q. When did that land produce oil or gas, Mr. Woodruff?
A. 1919, about seven years afterwards.
Q. Did the property of your wife produce oil and gas also?
A. Yes, sir.
Q. Did she receive income off of that property?
A. Yes, sir, she did.
Q. When did that income start Mr. Woodruff?
404 A. In 1919, the latter part of the year I believe.

Q. Did Mrs. Woodruff turn over any of that money to you?

A. Yes, sir.

Q. In 1920?

A. She turned over practically all of it.

Q. What was said to you the time she gave you the first money, Mr. Woodruff?

A. She said she did not know how to transact business and if I would invest the money for her that she thought that would be the best thing under the circumstances to be done.

Q. Pursuant to that conversation did she turn over a great deal of money to you?

A. Yes, sir.

Q. What did you do with it?

A. I took it under the agreement I was to invest it for her in securities and stocks which I considered of value and on the condition that I was to buy a large quantity of bonds for her. And she said she wanted her money invested in good securities.

Q. And did you do that for her?

A. Yes, sir.

Q. Was there anything said in that conversation as to whether or not her money was to be used in speculation?

A. Yes, sir, it was the understanding it was not to be so used.

Q. What became of the bonds you bought for her, Mr. Woodruff?

A. I kept trading and exchanging the bonds under the terms of the bonds at times certain bonds that were theretofore good would become shaky, and I would try to dispose of those and buy others or better bonds at a fair rate of interest and I kept them, the bigger end of them for a period, the bulk of them about nine or ten years.

405 Q. During the time you kept the bonds did they earn any dividends?

A. Yes, sir.

Q. What became of the dividends the bonds earned Mr. Woodruff?

A. They were practically all coupon bonds and when I was in California I would go down and clip the coupons and use the money for re-investment in other stocks.

Q. Did you ever deliver to Mrs. Woodruff either money earned as dividends or the proceeds of these bonds?

A. No, I think—I am uncertain as to the amount. I probably delivered to her some fifty to seventy thousand dollars worth of either dividends, interest or principal back.

Q. You never delivered to her any more than that?

A. Not that I can remember, and I am pretty positive that fifty thousand would be too much. I would say fifty thousand was probably too much and the minimum would be say twenty thousand.

Q. Not to exceed fifty thousand dollars?

A. To the best of my knowledge.

Q. You know when that was done?

A. At various times, I don't remember the dates. It was uncommon it was not very frequent.

Q. What was the average rate of interest drawn by the bonds, Mr. Woodruff?

By Mr. Turnbull: We object to that as a conclusion and cannot be verified as he owned French bonds, the Kingdom of Netherlands, various railroad bonds, utility bonds, some of them for five thousand, some twenty-five thou-
406 sand, some fifty thousand and other and sundry amounts. To ask this witness what was the average rate of interest, unless he shows he has made a calculation of it, is incompetent.

By Mr. Potter: He can give his best judgment.

By the Court: It would be a guess, I believe.

By Mr. Potter: I will withdraw the question.

Q. You have those bonds at this time Mr. Woodruff?

A. No, sir.

By Mr. Turnbull: I thought you stipulated as to that. Go ahead, no objection.

By Mr. Potter:

Q. You never delivered the bonds or the proceeds therefor to Mrs. Woodruff?

A. No, sir.

Q. Except the amount not to exceed fifty thousand dollars?

A. That is correct.

By Mr. Potter: That is all.

Cross Examination.

By Mr. Turnbull:

Q. Did you keep any separate books or accounts concerning the money Mrs. Woodruff gave to you for this investment purpose?

A. I did in the beginning through the income tax and things of that kind, and they disappeared. I don't know where they are.

Q. You have no record now?

407 A. No, sir.

Q. That you know of?

A. No, sir.

Q. The evidence, the documentary proof offered when your wife was on the stand shows $50,000.00 State of Arizona Tax Anticipation Bonds and another purchase of $25,000.00 of other Tax Anticipation Bonds, do you remember they were purchased?

A. I remember the $50,000.00, I don't recall all of them.

Q. The record shows $75,000.00 of this class of securities was purchased?

A. I am thinking there was at least $60,000.00.

Q. One debit slip shows $50,000.00 and a draft $25,000.00 and the record testimony shows that Tax Anticipation Bonds were purchased with that money?

A. Probably so.

Q. Were those high class bonds?

A. Yes, sir.

Q. There was one purchase of $40,000.00 of Fourth Liberty Loan Bonds?

A. Yes, sir.

Q. Did you consider those first class?

A. The highest class.

Q. And the New York Central Railroad Mortgage Bonds, were those also high class bonds?

A. I don't remember now, I don't remember all the companies.

Q. They were Railroad Mortgage Bands, you considered those good bonds or you would not have bought them?

A. I don't remember the Railroad.

A. And the Pacific Mortgage Company?

408 A. Yes, sir.

Q. And the Edison Company of California?

A. Yes, sir, A-1.

Q. And the Kingdom of Netherlands, were they good bonds?

A. Yes, sir.

Q. And the Union Oil of California?

A. They were good bonds, that was a good Company.

Q. You considered those first class?

A. Yes, sir.

Q. The City of Los Angeles Water Work Bonds?

A. I did not know so much about those.

Q. That was your best judgment?

A. I did not think they were bad.

Q. The Republic of France, you thought they were good at the time, didn't you?

A. Yes, sir.

Q. The evidence here shows that on one occasion Mr. Schock of the First National Bank, he sent you a telegram showing you were some $33,000.00 overdrawn in the account and calling your attention to the fact your wife's account was not overdrawn and asked you to cover it as shown here, he authorized a transfer to your account the sum of $30,000.00?

A. I remember there was a large amount, I don't remember the exact amount.

Q. There is a matter here that is somewhat vague, that is in regard to this Oregon ranch, it was purchased subject to $25,000.00 mortgage wasn't it?

A. Yes, and another one for $1,000.00.

Q. Another mortgage?

409 A. Yes, sir.

Q. Your son Howard refers to six ranches or six purchases that made up the ranch, was there six ranches?

A. They are not exactly adjoining they lay as far as nineteen to twenty miles apart.

Q. Six of them in the scope of twenty miles?

A. Yes, sir.

Q. And they are all subject to this one $25,000.00 mortgage?

A. No, all the most valuable ones are.

Q. Some of them are clear of that?

A. Yes, sir, some of it.

Q. Did you buy those six parcels of land from six different people or from the same person in six different purchases?

A. I bought the ranch around 1924 and my son thinks I made six deals, I perhaps made fifteen or twenty. What he has in mind was there were six tracts that join.

Q. Maybe I misled him, I asked him if there were not six purchases made, I might have misled him as to that.

A. There were various tracts of land and I believe some Indian land, I bought 160 acres at times in one tract and other times other numbers of acres; numerous deals and numerous tracts.

Q. Have you got any way of fixing the dates when you disposed of these various securities?

A. No, I have not.

Q. Do you know of or about the time you disposed of the $50,000.00 as on a Tax Anticipation Bonds?

A. No, as well as I remember probably it was— it was very seldom I ever sold bonds of denominations larger than $10,000.00 to individuals and I presume I sold them that way.

410 Q. Isn't it a fact at one time about 1934, first in 1931 or '32, that the United States Government through the Treasury Department called your attention to the fact they had issued a levy on your securities standing in your name in the bank for an income tax assessment for about $425,000.00?

A. It was around $640,000.00 before they got into it and they cut it down to $480,000.00.

Q. It was first $640,000.00 and they reduced it to $480,000.00?

A. Yes, I think so.

Q. Your attention was first called to that fact verbally when a levy of some kind was made against your securities, was that the first time you knew they had levied on your property?

A. I don't understand your question.

Q. Did you find out some time in 1931 or '32 that the United States Government through the Treasurer's Department had levied upon and seized your securities for an alleged income tax assessment for the sum of $64,000.00?

A. That was in December of 1931, yes, sir, I think so.

Q. Do you know a man by the name of— did you know at that time a man named R. F. McCrory?

A. Not out there.

Q. You knew him about that time?

A. I have known him for fifteen or twenty years before that, he lives here.

Q. After you learned this levy had been made on your bonds and securities in California did you and Mr. R. F. McCrory and your son Howard go to Washington,
411 D. C.?

A. About the time of the attachment.

Q. About that time?

A. No, after that time.

Q. Did you know a man by the name of Gardenhire about that time?

A. Yes, sir.

Q. Do you know what his first name is?

A. Bob.

Q. Bob Gardenhire?

A. Yes, sir.

Q. Did you know a man by the name of J. B. Moore?

A. Not well, I had heard of him as an Ardmore attorney.

Q. Any time after you learned that the Government had seized your bonds and securities in Washington for this alleged tax income defalcation did you and your son Howard and Mr. McCrory go to Washington?

A. Any time after that?

Q. Yes.

A. Yes, some time in the spring of 1934, if I remember right.

Q. How long did you stay in Washington, D. C., with Mr. McCrory and Howard Woodruff?

A. I was there about ten days.

Q. You went there in connection with adjusting this amount of alleged income taxes from $640,000.00 to $420,000.00 or less?

A. No, they had reduced it to $102,000.00 and Darnall

had offered to compromise without my consent for $80,000.00.

Q. Do you refer to James Darnall?

A. Yes, sir.

Q. Did James Darnall go to Washington with you?

412 A. No, he did not.

Q. Was he in Washington?

A. He was called by the Income Tax Department or ordered to come to Washington and bring all the papers that he had taken away from the place which involved 150 pounds of paper, he brought one lawyer's grip full.

Q. Did he come to Washington and arrive while you were there?

A. He was there.

Q. And he brought the papers?

A. I don't know, it seems kinda like he did.

Q. He did get there with these papers?

A. He took them to his place.

Q. Had he been employed by you in some capacity?

A. Yes, to figure out the Government fees I owed them for the taxes or something.

Q. He offered to settle with the Government without your authority for $80,000.00?

A. As a compromise, yes, but I rejected it.

Q. While in Washington did you reject that compromise?

A. No, it was previous to that.

Q. While in Washington you were conferring with the Government officials about the tax matters?

A. Yes, it was brought up then.

Q. Did you have any other business in Washington?

A. I had none then. There was another trip made to Washington which I did not go, other people.

Q. On that trip that you did go you were gone ten days with McCrory and Howard, did you have any other business at that time?

413 A. No.

Q. And from that place you came back to Ardmore?

A. Yes, sir.

Q. When you came here you consulted with your then attorney Mr. Moore?

A. Yes, sir.

Q. Did you again return to Washington?

A. No, I did not.

Q. Who went to Washington at that time on your behalf?

A. I believe J. B. Moore went the first time, anyway he went the second time and McCrory and my son Howard and Bob Gardenhire, I think that was all.

Q. How long did you stay that trip, do you remember?

A. I did not go.

Q. How long did they stay?

A. I don't remember.

Q. On the first trip to Washington did your wife go with you?

A. I think so.

Q. You think she did?

A. I think she did and I am pretty sure she did.

Q. After the second trip to Washington after Mr. Moore got back you perfected a settlement with the Government on your taxes?

A. They only gave me ninety days and I asked for three months.

Q. Which was all the same. Did you settle with the Government?

A. Yes, sir.

Q. How much money did you pay the Government in that settlement?

414 A. $50,160.00, I did not pay it all at once.

Q. You know approximately what time you made the payments? What I am getting at is this, you say it was in December, 1931, that they ran the attachment on you, now it was after that, the second trip to Washington had been made, that would bring it up into 1932?

A. It was in 1934 the trips were made.

Q. Do you remember when the payments were made, the compromise wherein you paid the total sum of $50,160.00, is that the amount?

A. Yes, sir.

Q. Mr. Herman Woodruff in connection with the proof on his claim said he came to Los Angeles in 1934 and took the actual money up to the Federal Building?

By Mr. Potter: That was the Darnall judgment.

By Mr. Turnbull: No, I am not talking about the Darnall matter.

Q. I am talking about, he said he made a trip to the Federal Government to pay the income tax, took the money up there to pay the income tax with?

A. As I remember it was the final payment about the middle of 1935.

Q. You think it was the middle of 1935 and was the final payment?

A. I believe it was.

Q. Do you know when the first payment was made?

A. It was not a payment it was an attachment of my oil runs and oil property and a hold-up in 1932, I believe, or possibly at the time they attached it in December of 1931 and the runs and the receipts totaled about $21,000.00 at that time.

415 Q. Isn't it a fact that attachment of your securities and bonds in Los Angeles, that was the first time they attached your securities?

A. That attachment, not only that but the bank boxes as well.

Q. Your safety deposit box?

A. Yes, sir.

Q. And that was at the First National Bank of Los Angeles?

A. Yes, sir, and another bank.

Q. The California Bank?

A. Yes, sir.

Q. At Los Angeles?

A. Yes, sir, and maybe a small account in Ardmore.

Q. They did not attach that did they?

A. I don't remember if I even had one, if I did it was very small.

Q. Did you get any of the money that made up the $50,160.00 that you paid the Government from the sale of any bonds or securities you had at Los Angeles?

A. The best I remember the oil runs amounted up to that period to $21,000.00 and I got $10,000.00 which I owe now from Doug. Davis and that run it up to $31,000.00.

Q. You mean Mr. Davis who filed a claim here and which was allowed the other day?

A. Yes, sir, and I received other money from my mother that did not quite pay it out, it came very near it, my best recollection there was a balance of six or seven thousand

dollars and I am uncertain just how that was paid, but I believe they extended the time and took it out of the runs.

416 Q. I don't think you answered my question, I asked you if you sold any bonds and securities in Los Angeles to pay any of your income tax assessment that comprised the payment you made to the United States Government?

By Mr. Potter: We object to that, he has detailed how it was paid.

A. I don't remember at this time, the best I remember is as I have stated.

By Mr. Turnbull:

Q. Did you have a conversation with your wife, Willie Mae Woodruff on or about the time you purchased these various bonds for her account. I know what you said so far as you had arrangements that she did not want to speculate with it when you bought bonds and you said you thought they were gilt edge but you did trade them off for something that was shaky, when you did that you talked to her about it?

A. Certainly I did very completely, I mentioned the California Imperial Valley Bonds, I did not like them and that Company afterwards went bankrupt.

Q. You purchased $50,000.00 of the Imperial Valley Bonds, you thought they were shaky and they later went under and you traded them off for other types of bonds?

A. For the Salt River Valley, a Government project, yes, sir.

Q. When you traded the bonds of one type to another did you tell her you had traded them?

A. Most of the time I did, yes, sir.

Q. She admitted in this proceedings in support of her own claim when her account was debited, her account with the First National Bank was debited with various sums and the debit slips were issued particularly Exhibit

417 No. "78" in this proceedings for $26,500.00, the slip says, for investment, and Exhibit "78-B" says for investment according to instructions, those two exhibits were shown to Mrs. Woodruff and she was asked as to wh-

gave the instructions and she said you gave the instructions and you were authorized to give them. These two exhibits were shown to your wife and she testified in respect to the instructions for investment that you gave the instructions as to how the money would be used and she gave you authority to use your judgment in the purchase of these bonds.

A. Under the trust agreement when we had money that amounted to anything that was the original agreement, while I do not remember the individual transaction it applies to that.

Q. She said for investment according to instructions, then you gave the instructions and you had authority to give those instructions for her on those occasions, did you discuss with her what securities you had bought and what you had done with them?

A. On perhaps one-fourth of the deals, in other words most of our discussions was as to what were good deals and I offered her bonds and you understand at that time I had an account about three times as much as hers and very frequently I would go to the box and write a bunch of slips, notations on them, and there would be a gallon of them if they could be found. They were in the bank boxes when the Government asked to see the contents of the boxes and they threw them out.

418 Q. There has been introduced in evidence these exhibits for photostatic copies of the books of Drake, Riley & Thomas an account there in the name of Willie Mae Woodruff, I will ask you to look at it. Now it is this page which is marked Exhibit "16" for this hearing and there is a stipulation made by counsel that that is a copy of the books of Drake, Riley & Thomas of the account of Mrs. Willie Mae Woodruff, have you examined that Mr. Woodruff?

A. All I can make out of it.

Q. Have you examined it, I have shown it to you.

A. Yes, sir.

Q. You will notice from this exhibit it appears from this record, it is in the name of Mrs. Willie Mae Woodruff, and it appears under date of May 24th, 1921, and this letter says, "We take pleasure in confirming sale to you, when, as and if issued, for the account of Willie Mae Woodruff, of $10,000.00 Government of the French Republic 20-year

External 7½% Bonds due June 1, 1941 at 95½ and interest," and then follows a debit of $9500.00.

A. I don't see that item.

Q. Right there.

A. Yes, sir, I see it.

Q. You notice in the same year 1921, on October 8th of the same year it says, delivered to Leonard Woodruff account Leonard Woodruff, Sr., you notice that, I show you the entries on that account, do you remember the occasion of transferring the French Bonds to your account, to the account of yourself?

A. Yes, sir.

Q. Do you remember why you did that?

419 A. I think it was paid by Leonard. That implies it was her money I was using and I was using that for something else.

Q. It says transferred to Leonard Woodruff, Jr., and I will show you your account, you remember why you transferred from your account this amount to her?

A. No.

Q. Or the purpose?

A. I am uncertain, the best of my memory I was going to trade that for other bonds.

Q. The evidence shows it was Mrs. Woodruff's money that bought the bonds?

A. Yes, sir.

Q. They were put in her name and I want to know why on October 8th you transferred that to Leonard Woodruff.

A. That was paid by me.

Q. You are looking at an entirely different sheet.

A. No, it is right down there, and I have said time and again that I could not remember these different transactions.

By Mr. Potter: If the Court please, he testified he did not have any personal recollection of it.

By Mr. Turnbull: All right. The witness answered me by going over on the debit side of the ledger instead of the credit side.

Q. We find on November 25th, 1921, transferred to

Leonard Woodruff's account to balance and down further December 21st, 300 shares of Sears Roebuck and the price and 400 shares Cuban American Sugar and the price, and the same day December 20th, 300 shares—

A. That is 400 shares of the Cuban American
420 Sugar.

Q. And the next item is December 20th, 300 shares Cuban American sugar and June 6th V.R.S. Carolina something and the price, and then June 6th $10,000.00 Republic of Bolivia, and April 12th 15,000 Pacific Gas & Electric and 300 Shares, whatever that is right there, and other stocks right here you see, now I am asking you if you know why in 1924 you transferred those items I have read from *from* the account of Willie Mae Woodruff to your own account?

A. These orders were given over the telephone and in some instances I forgot to state the account, they were to be charged to, and there was a confusion in regard to that and some items that should not be in there.

Q. In an effort to show you are mistaken then, Mr. Woodruff, you know you never bought any French Bonds for yourself, the evidence shows she gave you a specific sum of money that she had received and that money was given to you to buy bonds and the record here shows they were purchased in her name?

A. I am referring to the Republic of Bolivia, I am not referring to the French Republic.

Q. She gave you a draft to buy the French bonds and they were bought in her name?

By Mr. Potter: I think it shows a sale of those bonds.

By Mr. Turnbull: I want to show he is incorrect. He did buy though with her money.

By Mr. Potter: This sheet shows they were sold and the money—

By Mr. Turnbull: The witness says he thinks there was a mistake on some of the items.

421 By Mr. Potter: We are using this to show the purchase of the bonds and this is to show the sale of the bonds. That is what that sheet shows.

By Mr. Turnbull: I have a right to ask the witness why he transferred certain French Republic Bonds to his account. We admit they were purchased through the medium of money as Mrs. Woodruff says they were purchased. Certain French Bonds were purchased and we have in evidence exhibits showing there was a buy order and they did buy the French Bonds, and we have now shown there were French Bonds in her name.

By Mr. Potter: That is right, if the Court please.

By Mr. Turnbull: And it shows they were transferred to Leonard J. Woodruff's account.

By Mr. Potter: When?

By Mr. Turnbull: October 8th, I will show all of this account. The money that was put to her account.

By Mr. Potter: That is right it was, I contend it does not show the sale of the bonds.

By Mr. Turnbull: I am not saying that the bonds were not purchased with the money of Mrs. Woodruff. I am trying to show they were transferred to Mr. Leonard J. Woodruff. No doubt but that much of this account of Mrs. Willie Mae Woodruff's will be approved, and if your Honor holds that this money went into these bonds and she can't trace the money into a particular bond, and I do not see how she can, then I am entitled to show when the interest started if this was a trust to invest or reinvest, and it is governed by the California law, and that law provides that the trustee is bound to keep on investing the money, and your Honor says that is the law. Now, after he sold the French bonds, if we can show when it was, that interest item is a lot of money, and that is all I am trying to do. My contention is if this was a true, and the present state of the evidence it appears that it was, and which no doubt the Court will find, when he took the money, if he took $10,000.00 and bought French bonds with it he had performed his trust up to that time. If he sold the bonds and did not re-invest the money he is liable to Mrs. Woodruff for the money he converted them into cash for, and if he did not within a reasonable time re-invest that money he is liable for the interest on the amount of money received therefrom.

422

By Mr. Potter: How about the dividends?

By Mr. Turnbull: She can't have both. She would be entitled to the dividends during the time if it was her property. If he converted the bonds he must re-invest the money within a reasonable time that is true. When he bought the bonds he was carrying out the trust, when he con-
423 verts the bonds into money and don't reinvest he is entitled to pay interest on the money.

By the Court: Until he bought the bonds the claimant would be entitled to the interest.

By Mr. Turnbull: That is right.

By Mr. Fischl: Mr. Potter asked Mr. Woodruff what dividends were paid on the bonds. The record does not show what rate of interest they drew, or what dividends they paid.

By Mr. Turnbull: In a way we are substitued in place of the trustee to do this, they say you have to account for this money Mr. Woodruff, and Mr. Woodruff says he does not know how many coupons he cut and does not know the rate of interest. Now I will say we think he is liable for this money, and I want to show when he transferred them to his account, that is what I am up against, and as to the rate of interest it is governed by the Statutes and laws of the State of California.

By Mr. Potter: Has it been made a part of this record?

By Mr. Turnbull: I don't think I have to, the Court will take judicial notice of it. It is Section 2238, and then another section, 2261 of the Civil Code, the next section is the penalty for failure to invest. What I have in mind dur-
ing the time he was acting in good faith buying these
424 bonds, he is not liable to Mrs. Woodruff for only the coupons that he did not account to her for, and I want to establish the date these bonds were sold, or transferred to his account, and if he did not invest that money then his estate is liable for interest, either simple interest or compound interest, that is my purpose.

By Mr. Potter: The Bankrupt or the Trustee are unable to show us what we would be entitled to as dividends.

and for that reason we are entitled to interest on our money.

By Mr. Turnbull: You are entitled to interest, not compound interest. I want to show on what date he did anything wrongfully, but from a certain date he said he took the money in violation of the trust and used it, and it is a serious question here.

By Mr. Potter: I think it is a sales record and not a purchase record.

By Mr. Turnbull: It shows on May 24th, 1921, there was in the hands of the brokers $10,000.00, $9500.00 worth of that particular bond actual value and I want to show when they, if the bonds were sold, or the amount transferred to his account what he did with it. I asked him if he knows the occasion, or what was the occasion of transferring
425 those to his account. I offer in evidence in re which relates to the books and accounts of Drake, Riley & Thomas and the books of—

By Mr. Potter: Page 16 is in evidence, but the first fifteen sheets were objected to the other day and your Honor sustained the objection and insofar as this claim is concerned to the first fifteen sheets.

By Mr. Turnbull: It was objected to by Mr. Fieler.

By Mr. Potter: I don't see how those exhibits would in any way benefit in this matter.

By Mr. Turnbull: Only show when he transferred the account. I want to call your Honor's attention to what it is.

Q. You sold those French bonds or ordered them sold?
A. Yes, sir.
Q. In that sheet, Page 16, it shows transferred to the account of Leonard Woodruff, Sr., when you got the money did you reinvest it in something else?
A. Yes, sir, I reinvested it unless I came to Oklahoma. That is about the time I came to Oklahoma and stayed about eleven months, the best I remember there were three deals in French Republic Bonds covering some $40,000.00.

By Mr. Potter: And what does that show?

By Mr. Turnbull: I would say on October 8th transferred to Leonard Woodruff's account.

By Mr. Potter: No, I can't see where they were transferred. The transfer is some $12,447.00 and the French Bonds were $9500.00.

426 By Mr. Turnbull:

Q. You remember buying Kelly Springfield Bonds?
A. I bought some, I don't remember.
Q. Did you buy some for yourself?
A. Yes, sir.
Q. The evidence shows in the exhibits by her there was Kelly Springfield bonds purchased?
A. Yes, sir.
Q. As far as you know these items appear on the column to the extreme right showing Cuban American Sugar Company stock, those were securities you purchased with Mrs. Woodruff's money and you had them, is that true?
A. Some of that was a mistake, some of that was my personal account.
Q. Tell us which was yours.
A. I don't remember altogether now.
Q. Your general account will close out at a later date and I want to know what part of it was yours and what part was hers.
A. I can't remember that.
Q. Will you read from Exhibit "16" what you think was not hers?
A. I don't see how I could possible do that.
Q. I show the item of Mrs. Willie Woodruff of June 6th, the Republic of Bolivia, $101.00 net, you think that was hers or yours?
A. I think it was bought for my account.
Q. You think the rest of it was Mrs. Woodruff's?
A. No, there is too much stock in there, I bought some stock for myself and more bonds for her.

427 Q. Can you help us by telling us what you don't think was hers and is in there by error?
A. No, I can't remember now.
Q. The items right there—(Indicating) 10,000 Shares, you don't think you bought any of that?

A. I don't think so.

Q. Anything else besides that item there and the Bolivia Republic bonds, you think the rest of that is correct?

A. I think those two are incorrect. As to the others, I don't remember, I had other stocks in my own account and I can't remember.

Q. And it says here July 12th, 1924, transferred to Leonard Woodruff $19,043.20, that closed out her account on that date?

A. This is dated in 1921.

Q. Down here in 1924?

A. I thought the last transaction was in 1924.

Q. Maybe to help you I show you exhibit, this exhibit attached to this stipulation which is now in evidence entitled the account of Leonard Woodruff, regular account, there is one sheet and another sheet, Leonard Woodruff another one, the first three exhibits one regular account, and the next sheet four it says Leonard Woodruff's special bond account, does that refresh your memory that you had a regular trading account with Drake, Riley & Thomas and a regular account?

A. I came to Oklahoma and I instructed Drake to buy certain things in my account, there was about twenty thousand I put in his hands to buy and sell on my account.

Q. During what time?

428 A. When I was in Oklahoma.

Q. I notice item No. 6, Exhibit No. "6" entitled Leonard Woodruff Special Bond Account, that started in 1922 and these other Special Bond Accounts, Exhibit No. "4", that is entitled Special Bond Account and it started in 1922 and runs over into 1923 and 1924.

By Mr. Potter: Are they a continuation of the other?

By Mr. Turnbull: Yes, and runs up into 1924.

Q. You notice that Special Bond Account was closed out in 1924?

A. I came back to drill a wild-cat oil well.

Q. You notice this Special Bond Account opened in 1922 runs to the last day of the year 1924?

A. I was not here that long.

Q. You were here about eleven months?

A. Yes, sir, about a year.

Q. That says paid $29,000.00 on the 21st day of December, 1924?

A. Yes, sir.

Q. Look at your Special Account, isn't it a fact some of the stock you purchased for your wife's account you transferred and into your Special Bond Account?

A. I don't think so, he was to transfer this money except where I thought it was not good and I replaced it with other stocks but I don't remember what stock.

Q. Isn't it the reason that Willie Mae Woodruff's account that you had it transferred to your bond account for the reason it could not be placed that way?

A. No, that is not a fact.

Q. And this stuff purchased by and for the benefit of your wife's account was handled by you under your
429 Special Bond Account, I am doing this to fix a date.

By Mr. Fischl:

Q. Mr. Woodruff, in every instance in which you sold bonds you had bought for your wife's account did you replace, when they were sold, did you replace those bonds with bonds of like value?

A. Yes, sir, approximately so, in each instance.

By Mr. Turnbull:

Q. During this time you say you did dispose of the proceeds of your bonds you were endeavoring to get good investments for her during that entire time?

A. Only when I was back here I dropped it, I was not doing anything with it right then.

Q. During the time you were actually engaged in using your wife's money to buy bonds and stocks and up to the time you took the money and used it for your own purpose you were endeavoring to get it in good stock?

A. Yes, sir.

Q. And when you saw certain stock was going to drop you traded those for something good?

A. Yes, sir, I tried to.

Q. It appears from this other evidence that your wife introduced here that her money was being used long after the time that her account with Riley & Thomas was used

and transferred to your account, I will ask you if it is not a fact you were handling her securities in your Special Bond Account. I think the record will show that.

By Mr. Potter: Some of the same issue was in his name.

By Mr. Turnbull: He had some of the same issue.

430 Q. You have there 300 shares of Sears Roebuck?

A. And I have a lot of the same stock.

Q. I will ask you this, there is an item of French Republic Bonds, the item is shown in your wife's account, you purchased that for her, and the evidence shows her money bought that amount of bonds, they were bought out of her account and the evidence your wife introduced shows her money bought the French Bonds, and the record shows they were in her account, did you buy any French Republic Bonds?

A. Yes, to the best of my recollection I bought in all a total of some thirty-five or forty thousand dollars.

Q. Have you got any way of knowing whether the French Republic Bonds appearing in Exhibit No. "16" which I interpret it as showing was transferred to the Leonard Woodruff Sr., account or the same bonds that appear in your Special Bond Account of Drake, Riley & Thomas. We find Kennecott Copper Company stock in 1921, September 10th, in the account of Willie Mae Woodruff and a reference to your Special Account shows Kennecott Copper in your account at a date after her account was closed out with Drake, Riley & Thomas, you know whether or not that was the same Kennecott Copper Company stock that was transferred to you on March 17th, 1924, when we find 100 shares of Kennecott Copper Company?

A. There is 800 more.

Q. February 1st, 800 shares of Kennecott Copper, you got any way of knowing that is the same Kennecott Copper stock you had in her account or was it another issue?

A. It could not be.

431 Q. Have you got any way of knowing when the Kennecott Copper stock in Mrs. Willie Mae Woodruff's account was sold?

A. Not unless you figure it out from the records there.

Q. The Kennecott Copper Company stock I find Kenne-

cott Copper in your account, any way for you to tell us after the clos' out of the account of Mrs. Woodruff if it is the same s ock referred to in your Special or General Account?

A. No, only I bought a lot of the same stock, I bought for her, which proves that I thought it was a good investment.

Q. In your Special Bond Account there is Kennecott during the time you were trading in her name in the same stock but afterwards her account was closed out and I want to know if the stocks and bonds were handled in your name for her?

A. No, the broker only had authority to deal specifically for me.

Q. It appears from documentary evidence that Mrs. Woodruff gave you money for investments along after the time her account with Riley, Drake & Thomas was closed out, the last entry appearing was in the month of July, 1924, for her on that sheet.

By Mr. Fischl: There is nothing to show that is a complete record of the account.

By Mr. Potter: Mrs. Woodruff testified she delivered this money to Mr. Woodruff for the purpose of buying bonds and he accepted it as such, purchased the bonds and placed them in the box and they would not appear in the books.

By Mr. Turnbull: It was after this account was closed out in her name she continued to give him money
432. and he handled that in the Special Account and at a certain date he took and hypothecated those securities and bonds and he is liable for interest from that date.

By Mr. Potter: I want the Court to understand the bonds would not appear on the account if he received the bonds.

By Mr. Turnbull: Long after her account closed out she was still giving him money to buy bonds.

By the Court: Go ahead.

By Mr. Turnbull:

Q. Mr. Woodruff, I show you Exhibit "3" attached to the stipulation, Heiser's Exhibit "1", now in evidence, which says, "Leonard Woodruff, Los Angeles, California," and the opening of that sheet shows December 23rd, 1920, were you living at 4624 South Figueroa Street at that time?

A. Yes, the home of my mother.

Q. That is where you and your wife were sleeping and eating your meals?

A. Yes, sir.

Q. Did you open that account?

By Mr. Potter: I think counsel is proceeding on the wrong theory, he did not keep this record, he is not responsible for what it shows.

By Mr. Turnbull:

Q. Were you dealing with Drake, Riley & Thomas on the date shown on this exhibit "3" in the month of
433 December, 1920, were you dealing with Drake, Riley & Thomas at that time?

A. Yes, before that.

Q. And were you on that date?

A. Yes, sir.

Q. Did you deal with Drake, Riley & Thomas continually on through 1920 and 1921?

A. The best I remember until 1926.

Q. Even you think on up into 1926?

A. Yes, sir, I think so.

Q. Your wife testified when she gave you checks in a great many instances the checks were in blank as to the amount of the checks as to the name of the payee and I take at random from her exhibit, Exhibit "15", the only handwriting thereon was a signature, then you or someone else filled out the check and the amount now read $15,980.63, that is your handwriting, is that correct, this handwriting and the amount here?

A. Yes, sir, the reason you could not have the amount written in, you would not know the accrued interest.

Q. And the payee is stamped in?

A. Yes, sir; they got the check for the bonds or securities.

Q. The evidence shows some of those stocks were taken.

such as Exhibit "11", a check to Drake, Riley & Thomas for $5,114.44 which is attached to Exhibit "11-A" of Drake, Riley & Thomas, confirmed a sale to you in your name and she says it was put in your name but it was her stock or bonds, which seems to be indicated by your statement on the bottom of Exhibit "11-A"?

A. Yes, sir, this statement means I put them in the bank box.

434 Q. These bonds were bought with her money?

A. Yes, sir.

Q. This invoice is made to you in your name and actually paid for by her money?

A. Yes, sir.

Q. Isn't it a fact in instances of that kind when you used her check, she delivered you a check given to you in blank the bonds were bought in your name, you knew they were being set up on that trading account in your name and I am trying to fix the date you got rid of them?

A. Yes, if I remember she had a separate account which was for the purpose of trying to keep the books clear.

By Mr. Potter: According to the exhibits the record shows Mrs. Woodruff's account was not opened until May of 1921.

By Mr. Turnbull:

Q. You know if she did or did not have an account at that time that was being put on your account?

A. They had to be one of the books, some one book at least.

Q. In those instances when you gave them the money and they bought the securities in your name, setting it up on your regular account, you know the books would show when you traded that particular security you held for Mrs. Woodruff, when you sold them off?

A. No, that doesn't say anything about the sale.

Q. From time to time Drake, Riley & Thomas gave you statements of securities that you had bought and sold in your name?

A. Yes, sir, generally as I would register the statements.

Q. Can you fix the time, you testified you did invest and

reinvest these monies authorized and delivered to
435 you by your wife and you clipped the coupons and put the money back into such stocks for your wife, as you deemed proper, for nine or ten years, that would bring you up to 1930. After 1930 you say you disposed of the stocks and securities and did not give the money to Mrs. Woodruff, is that correct?

A. That is correct.

Q. What was the purpose of you taking the stocks and securities and using the money yourself about that time, were you needing more money than you were getting?

By Mr. Potter: We object to that, maybe he did not do that.

By Mr. Turnbull:

Q. I am refering to the time you say you took the stocks and got the cash and used it for your own purpose.

A. If I remember right I had about $500,000.00 in bonds and securities in the bank boxes, I did not say they were mine personally in 1930 and some of these bonds they had quit paying interest and dividends owing to the depression and I conceived the idea myself of buying and selling stocks with this money, would that answer the question?

Q. That was the depression in 1930?

A. Yes, sir.

Q. You were going in and buy.. g and selling on the market, is that it?

A. Yes, sir.

Q. That would take you out of the class in which you had invested this money and put you in a speculative class?

A. The New York Stock Market, yes, sir.

Q. What character of stock did you then buy when
436 you conceived the idea of trading in stocks, you just merely went into the market?

A. Yes, sir.

Q. Through what brokers did you buy stock, I am talking about speculative stocks.

A. I don't recall all of them.

Q. You mean such as Slaughter, Anderson & Fox?

A. Yes, sir.

Q. And they broke up?

A. Yes, sir, and one changed the name two or three times.

Q. The firm originally was Slaughter, Anderson & Fox, and the name was changed to Anderson & Fox?

A. I never had any business with them after they changed the name.

Q. Some of these exhibits, "28" I think, I show you Exhibit "28" is that your handwriting, that check to A. O. Slaughter, Anderson & Fox. Your wife said that was her signature and some one else filled in the amount?

A. I am not sure.

Q. You know whose handwriting it is in?

A. No, sir, I don't.

Q. It is dated May 18th, 1931, to confirm that look at Exhibit "28-A", "28" is dated the 18th and Exhibit "28-A" is dated the 19th.

A. This looks like my handwriting.

Q. Are you referring to Exhibit "28"?

A. To the check.

Q. The word five thousand, you think that is your handwriting?

A. Yes, sir.

Q. You know the name of A. O. Slaughter, Ander-
437 son & Fox, you don't know whose handwriting that is in?

A. I don't believe it is mine.

Q. Do you refresh your memory from that check so you can say in 1931 you were trading with Slaughter, Anderson & Fox?

A. Yes, sir, the forepart of the year.

Q. What other brokerage firms did you trade with?

A. The Bank, the First Securities Company and the American Bank, I believe, and the stock companies changed their names.

Q. We have here Hentley & Company, did you deal with them?

A. Yes, that was another one.

Q. And Slaughter, Anderson & Fox?

A. Yes, sir.

Q. And later Anderson & Fox?

A. I don't think I ever dealt with Anderson & Fox.

Q. I show you Exhibit "28" marked for identification

in favor of A. O. Slaughter, Anderson & Fox, Mrs. Woodruff says that instrument was given in payment of $5,000.00 in money which she expended by her check Exhibit "28".

A. I have no recollection of ever being in a place they owned.

Q. Does that refresh your memory in 1931 you were dealing with Slaughter, Anderson & Fox, it does or it does not?

A. No, it does not, I don't remember it.

Q. You remember anyone else you dealt with after 1930 other than Danks Hentley and Slaughter, Anderson & Fox?

A. I never dealt with Drake, Riley & Thomas in speculative stocks at all and the others Danks Hentley & Company and Slaughter, Anderson & Fox, I dealt with them in 1930 and the forepart of 1931, as I recall maybe eight months of 1931, maybe nine months.

438 Q. You were dealing then almost solely with the New York Stock Market?

A. Yes, sir.

Q. There is a difference in time, the Stock Market opens at 7:00 o'clock in the morning in California to get the 10:00 o'clock business there, that is what happened in those days when you were trading?

A. That is when I was trading with them.

Q. The New York Stock Market due to difference in time opens at Los Angeles at 7:00 o'clock in the morning?

By Mr. Potter: That is immaterial here.

By Mr. Turnbull: None of these stocks shows to be speculative stocks and these stocks were bought with his wife' money, they were standard good stocks, I take it that they were up to 1930.

By Mr. Potter: The question is whether it makes any difference whether he bought it at 7:00 o'clock in the morning or 10:00 o'clock.

By the Court: That is immaterial, sustained.

By Mr. Turnbull:

Q. Did you personally conduct the buying and selling after 1931 of the stocks?

A. Not after 1931

Q. After 1931?

A. Not after that.

Q. You did not trade any after 1931 you say?

A. Yes, I did not personally, I was sick and the Government attached me.

Q. After 1931 you did not trade in any speculative
439 stocks?

A. No, I was trading up in December of 1931, that is when I ceased.

Q. Did you trade in speculative stocks after 1931 in December?

A. I don't believe I can answer, I don't know what you are trying to get at.

Q. You have testified in 1930 when conditions were bad, up to that time you had used your wife's money to buy good bonds and stocks, after 1930 you conceived the idea to deal in speculative stocks, how long did you deal in speculative stocks?

A. The Government stopped me in December of 1931, and after that I was not released until 1934 or 1935, it was about 1935.

Q. How long after you conceived the idea in 1930 to deal in speculative stocks was it until you ceased business?

A. My health stopped me before December, I was unable to do that.

Q. Did you, after you conceived the idea of dealing in speculative stocks, did you ever deal in that kind of stocks or was that just an idea, you did not carry out?

A. In 1929 and a little in 1930 and a little in 1931.

Q. Did you use the money that you got from the sale of your wife's good bonds to speculate in the market?

A. Yes, I did.

Q. How much, when did you take her gilt edge securities and sell them and convert them into money and speculate with the funds, when did you do that, start to do that?

A. The bulk of it went in 1930 and the forepart of 1931, maybe a few in the latter part of 1929.

Q. At the time the Government attached your
440 stock in Los Angeles in December of 1931, then all of her money was gone, all the bonds you had for her

you had disposed of them by that time, or did you still have some of them?

A. I don't like to answer that question, I have settled with the Government and I don't want to bring up that disputed question again or that dispute.

Q. Your wife wants a certain amount of money plus interest from the time you wrongfully took her money there is no trick to it at all. At the time the Government put this attachment on you—

A. I had at that time some forty, between forty and forty-one thousand shares of New York stock and I considered that she owned part of this and when the crash came or when I was attached about that time the market broke and they went to nothing.

Q. In what was that forty to forty-one thousand shares invested?

A. I could not give you that as to all of them, but as far as Locomotive Stock I had 3100 shares and there was only 100 shares in the Company.

Q. What else did you have in that 40,000 shares?

A. I am not in a very good condition and it would be an innumerable list.

Q. Did you consider those stocks as speculative or standard stocks?

A. I was buying New York Stocks because I considered I was speculating in them.

Q. You mean you were buying them on margin and not buying them outright?

A. Small margins.

441 Q. Do you know the difference in buying outright and buying it through a broker and putting up a small margin?

A. Yes, sir.

Q. These 40,000 shares of stock you had those on margin then, you had not bought them outright and paid for them?

A. I owed the broker not over $45,000.00 and I had individual property they were actually loaning me $100,000.00 on and in 1931 in December, when the Government levied on me it ruined me.

Q. In 1931 when the Government levied on your stocks

and bonds, at that time you had taken all of the bonds that you considered belonged to your wife and sold them?

A. Practically all of them.

Q. How much of that cash did you put in the American Locomotive and other stocks that you had on the New York market?

By Mr. Potter: I object to that, if the Court please, he testified he had in 1931 disposed of most of her bonds.

By Mr. Turnbull: If you find it is an investment trust the question will arise if he converted these admitted sound securities and thereafter put them into another class of stock and I am entitled to know whether that was wilful or not.

By Mr. Potter: We make no contention that it was wilful.

By Mr. Turnbull: I accept the stipulation, compound interest, that would take the matter of compound interest out of this question.

Q. Do you know if you had any of Mrs. Woodruff's so called gilt edge bonds and stocks on hand in December of 1931 when the Government ran the attachment on
442 you, did you have any of the good stuff on hand belonging to Mrs. Woodruff?

A. Maybe a little of it.

Q. Do you think you had the French Republic bonds?

A. No, I had disposed of those long before.

Q. Do you think you had the $40,000.00 United States Liberty Bonds you bought for her?

A. Well, I can't remember just what I did have.

Q. You have no way of finding out now have you?

A. I can make a general statement is all. But I had sold some of those two years prior, the best of my memory about $83,000.00 of Liberty Bonds had been sold, but as to who they belonged to, I do not remember.

Q. You mean in 1930 and '31?

A. Yes, sir, or prior thereto.

Q. You think the time the Government attached your property at Los Angeles you had the State of Arizona Tax Anticipation Bonds which Mrs. Woodruff claimed amounted to $75,000.00

A. I had $10,000.00 and I believe $20,000.00 of those.

Q. Of those left at the time, that is what you mean?

A. Yes, sir, I can give you a little further explanation. After the Government ordered a sale of the bonds and were holding my bank boxes all at once they released this stuff.

Q. I asked you at the time they levied on it which you say was in December of 1931 for something like $600,000.00 at that time had you sold the State of Arizona Tax Anticipation Bonds which you had bought for Mrs. Woodruff

443 in the sum of $75,000.00?

A. I had $10,000.00 worth maybe.

Q. You think you had sold the $40,000.00 Liberty Bonds?

A. I had sold $83,000.00 worth.

Q. You think that included all of the $83,000.00 you mean you think that included her $40,000.00?

A. Well, I am not sure.

Q. You think you had the $40,000.00 worth which you had purchased for her account at that time?

A. I had $83,000.00 worth in all and I figured I would replace that money with other bonds, whether I had or not I do not remember. I figured I would do that before she called on me for an accounting.

Q. Did you ever buy more than $83,000.00 worth of Liberty Bonds for your account and for your wife's account, both of them?

A. Yes, I expect I did.

Q. Is that the reason you are unable to tell us if you had disposed of those bonds?

A. Yes, sir.

Q. Had you disposed of the Edison Bonds?

A. Yes, sir.

Q. The Kingdom of Netherland Bonds?

A. Yes, sir.

Q. And the Union Oil of California?

A. I am not sure.

Q. The City Water Works Bonds?

A. Yes, sir, they were gone.

Q. And the French Republic Bonds you purchased some for her account and some for your account?

A. I think I disposed of those two or three years

444 previous to that.

Q. And the New York Central Railroad Bonds?

A. I don't remember the bonds.

Q. Would it help you if I would show you the buy order on that?

A. It might.

Q. You remember $25,000.00 of Utah Bonds, you remember those, does that recall to your mind any bonds purchased?

A. No, I would not know them by that name, I don't remember.

Q. How much of the money that you got from the sale of these bonds that you considered good gilt edge bonds, how much of that money did you put, withdraw the question. You say by this time in December of 1931 you had disposed of by sale most of the bonds, the so called gilt edge bonds and stock you bought for the account of your wife?

A. The bulk of it.

Q. How much of that money had you put into the purchase of the 40,000 shares of the New York Stock market stocks?

A. Practically all of it and $150,000.00 more.

Q. All from your wife's bonds and stocks and $150,000.00 of your own?

A. Yes, sir. and I believe more than that, possibly $250,000.00.

Q. You were not trying to lose your wife's money, were you?

A. No, sir, I was not.

Q. Were you trying to promote her general financial interest?

A. Yes, sir.

Q. And trying to make money with your own
445 $150,000.00 in the same deal?

A. Yes, sir.

Q. Did you tell her at any time you were buying New York stocks on the market?

A. She knew it, I did not tell her, and I considered most of the money I was dealing with at that time as hers.

Q. What did you tell her?

A. I did not have to tell her. I did not have to tell my

wife hardly anything, I did as I pleased without much discussion. I was not the head of the house entirely of course.

Q. I have here before me a statement of Drake, Riley & Thomas dated February 4th, 1921, as Willie Mae Woodruff's Exhibit No. "16", which shows purchase of American Locomotive stock, were you buying American Locomotive stock in 1921?

A. Yes, sir.

Q. And buying this stock shown on Exhibit No. "16" Montgomery Ward & Company stock and General Motors stock and United States Steel Corporation stock, Sears Roebuck and so forth, were those the stocks you were buying on the New York Market?

A. Yes, sir.

Q. Did you consider at that time that General Motors was a good or was it a speculative stock?

A. I believe I said it was speculative.

Q. I am asking you what you considered General Motors stock as?

A. Standard.

Q. And United States Steel?

446 A. That is a standard stock.

Q. Did you tell your wife you were buying that type of stock that you are talking about now?

A. As far as I remember I did not discuss it with her just then.

Q. You said she know you were buying this stock, did she say anything about you not buying such stock as General Motors and United States Steel?

By Mr. Potter: He said he was buying for himself.

By Mr. Turnbull:

Q. Did your wife complain that you should not buy United States Steel in that language or any other language?

A. It was not discussed.

Q. Did you tell her you were buying United States Steel Corporation stock?

A. I don't remember if I did, if I did it was a casual remark.

Q. What would the remark be?

A. I would not remember.

Q. Did you tell her you were buying General Motors Stock?

A. I don't know.

Q. Do you say she knew or did not know you were buying General Motors Stock?

A. I would not know.

By the Court: Gentlemen it is now 12:00 o'clock and we will recess until the hour of 1:30 for lunch.

(Whereupon Court recessed until 1:30 o'clock P. M., this day.)

Thereafter and on the 22nd day of November, 1940,
447 at the hour of 1:30 P. M., Court met pursuant to recess taken for the noon hour, the parties hereto being present as heretofore, after which the following further proceedings were had herein:

LEONARD J. WOODRUFF, recalled, having been heretofore duly sworn, testified as follows:

Further Examination.

By Mr. Turnbull:

Q. You say that you had $150,000.00 of your own money invested with the money of your wife in this 40,000 shares of mixed stocks on the New York Stock Market, did you lose your $150,000.00.

A. It all went when the Government attached my property in the sale and for these taxes.

Q. Do you mean the United States Government ordered the shares of your stock sold to pay your income tax?

A. Yes, but after three days they refuted the order, but the stuff had already been sold.

Q. The United States Government did conduct the sale of your stocks?

A. They ordered it sold, yes, anyway it was disposed of by order of the Board some way and I never realized anything.

Q. That case included the 40,000 shares of the New York Stock Market which you say you and your wife owned?

A. Yes, sir.

Q. In your opinion some of the stock sold under that order was stuff that belonged to your wife as well as yourself?

A. She did not know it but I considered it that
448 way.

Q. Most of it was sold under the order of the United States Government to satisfy the income tax and that included the stock of your wife as well as yourself?

A. Yes, sir, they held that as a joint income tax sale while they did not attach her property her stuff was sold.

Q. The Government at that time claimed you or your wife had made returns for a good many years?

A. About seven years I believe.

By Mr. Potter: I object to that, he testified it was all sold, he said they claimed they sold it because they should not make a joint return.

A. We had put in separate returns and I have since then, that was on the recommendation of Mr. Darnall, the man employed by me.

Q. That was the end of Mrs. Willie Mae Woodruff's stock and shares that was sold at that time?

A. There were a few left maybe.

Q. How many or how much in value was left?

A. I think $9,000.00, 1100 shares.

Q. How much in value?

A. I don't know.

Q. $10,000.00, $100.00 a share?

A. No, it was not worth that, not $10,000.00.

Q. How much would it be?

A. I would guess it probably, I would not know.

Q. Wasn't it about $100,000.00?

A. No, it was not, I would say maybe fifteen or eighteen thousand dollars.

Q. What became of that?

449 A. I think, I don't remember which one it was. I think the last one or the last batch was sold in about some time in 1934, I don't remember what stock it was.

Q. When you say the Government ordered it sold that was the early part of December, 1931?

A. Yes, sir.

Q. After that sale occurred there was fifteen to eighteen thousand dollars left of Mrs. Woodruff's stock and bonds?

A. Yes, sir.

Q. Do you know who got that $18,000.00 worth of stock?

A. I was sick at the time, she did not know it. I had $10,000.00 of this River Valley in the house and I considered it worth $10,000.00 par value.

Q. Is that the $10,000.00 Mr. Darnall took and credited you with for his services, is that the $10,000.00 worth of stock he took and said, "Here is a receipt on account of my services?"

A. He did not give me a receipt. $7,000.00 was for living expenses and the other $3,000.00 was to be used in this marginal account, that was what I wanted it for.

Q. Mrs. Woodruff did not get it?

A. And she did not know it was her stuff.

Q. That particular stuff she did not know anything about it. I direct your attention to January 15th, 1933, could you tell us where you were at that time?

A. January 15th, 1933?

Q. Yes.

A. No, I don't remember, I probably could in 1932. I don't know where I was in 1933.

Q. Do you remember writing a letter dated Janu-
450 ary 15, 1933 and signing the same in which you say over your signature, "I may have been rather poor in guardianship through sickness and inability but you know the stocks have not been dissipated, do you remember writing such a letter to your wife?

A. No, sir.

Q. Were you present when the trial of the case of Darnall vs. yourself in the Superior Court in the State of California at Los Angeles?

A. All except one day or part of a day.

Q. Did you see such a letter introduced in evidence there as I have described?

A. No, sir.

Q. You have no recollection about it at this time?

A. No, sir.

Q. At the time the United States Government levied on and ordered sold the stock at Los Angeles in the early part

of December, 1931, did your wife know you were having difficulties about your income taxes?

A. Not unless, not otherwise than a personal remark of mine as to some threats about Coleman and Carroll.

Q. Mr. Coleman was your attorney at the time?

A. No, he was not.

Q. He had been?

A. Yes, sir.

Q. Did he go to Mrs. Woodruff and tell her about your trouble with the Government?

A. No, Mr. Carroll.

Q. He told your wife about the trouble?

A. He made threats.

451 Q. Who was he?

A. He is dead now and Coleman sued me for $85,000.00.

Q. When you settled up the last payment in 1934 on your income tax that was about the time you signed the—(Withdraw that). This morning you told us you settled with the United States Government by paying $50,160.00 and that sum was paid in three or more installments?

A. At least four I believe, maybe three, I don't remember.

Q. There were payments made during the year 1934 and the last payment was the middle of 1935?

A. As near as I can remember maybe the forepart.

Q. In the claim filed against you by your wife, Willie Mae Woodruff, there was a credit on that claim of $95,000.00 by the sale of certain property, do you recall the sale of that property to your wife?

A. Yes, I did not have the cash and owed $48,500.00 taxes on it and my account was still attached and I was going to lose it and I considered it more valuable than that, and I was trying to make up for all this loss just as much as possible.

By Mr. Turnbull: That is all just now.

Examination by Mr. Potter:

Q. Mr. Woodruff, there has been introduced in evidence a run sheet from the Carter Oil Company showing Mrs. Woodruff's income from the Carter Oil Company from 1920

to 1930, do you know whether or not Mrs. Woodruff had any income in the year 1919, did she receive any money during that year that you remember?

A. She had several deals whereby she got other
452 income at that time, only one that I recall in 1919, I could not specifically state what amount but she sold a 20 acre lease to the Carter Oil Company and some other Company associated with them, but the deal was made direct with the Carter Oil Company and they assigned this other half interest for the sum of $45,000.00.

Q. That was paid to her during 1919 as a bonus? That $45,000.00 received as a bonus for the 20 acres?

A. Yes, sir.

By Mr. Turnbull: We object to that as leading.

By the Court: Go ahead.

By Mr. Potter:

Q. You were questioned regarding the transfer of an account of Mrs. Woodruff to you for $30,000.00 or some other amount, I forget just what it was.

A. I put some of these slips in the bank with a rubber band around them, in the bank box, such as you have a few of here, and the rest had been destroyed but I wrote the notations that you will find on those.

Q. Is that a reinvestment of the money you received pursuant to her telegram to cover an overdraft of yours? (Handing instrument to witness.)

A. Yes, sir.

Q. Mr. Woodruff, during the years 1931 to 1939 were you in the State of California all the time?

A. No, sir.

Q. Do you know how much of the time you were not in the State of California during those nine years?

A. No, not definitely, I was in Oregon and Oklahoma, I would estimate I was out of the state a little over half
453 of the time.

Q. Does that apply especially to the years '35 to '38?

By Mr. Turnbull: We object to that as calling for a conclusion of the witness.

By the Court: Sustained.

By Mr. Potter:

Q. Mr. Woodruff, how much of the time were you in the State of California during the years 1935 to 1939?

A. I was in Washington, D. C., the forepart of 1934 and when I came back to Ardmore I was here a considerable time, I think that will answer for that year, I am not sure. Probably six or eight months of the time in 1934, maybe practically all the time I was here.

Q. In 1935 how much of the time were you in Calfornia?

A. I think I was in Oregon two or three months of that time.

Q. And were you in Oklahoma during that time?

A. I am not sure; I think so.

Q. Were you in California as much as six months in the year 1935?

By Mr. Turnbull: That is calling for a conclusion of the witness and is leading and suggestive.

A. I don't recall, I think I was in Oklahoma part of the time.

By Mr. Potter:

Q. To the best of your judgment how much of 1935 were you in the State of California?

A. I don't recall that now.

Q. Can you approximate it?

A. I don't believe I would, I would have to try to look up the records.

Q. How much of the time were you in the State of
454 California in 1936?

A. May I answer that indirectly, I remember fifteen or twenty years transaction better than the last few years and my mind has been rather hazy on those things.

Q. You don't know how much of the time you were out of the State of California during 1936?

A. I don't know, it seems to me I was out of the State seven or seven and a half months.

Q. That was in 1936?

A. Yes, sir.

Q. And in 1937 how much of the time were you out of the State of California?

A. I don't seem to be able to remember right now, I don't know, if it is my present condition or what it is, I don't know, I can't remember those things though.

By Mr. Potter: If the Court please, I understand Mr. Woodruff will be back on the stand anyway.

By Mr. Turnbull: I want him back on this one matter in regard to the time he spent in California. I have a great deal of data showing where he was and I want to examine him rather fully as to that.

Witness excused.

WILLIE MAE WOODRUFF, recalled for further examination by Mr. Turnbull, testified as follows:

By Mr. Turnbull:

Q. You are the claimant in this case?

A. Yes, sir.

By Mr. Turnbull: If the Court please, this witness is called under the provisions, under the new rules which
455 permit the calling of an adverse party without being bound by the testimony.

Q. There is a house, residence property on Iveness Avenue, Los Angeles, California, will you tell me the number of that house?

A. 2436 Iveness Avenue.

Q. Heretofore in the bankruptcy proceeding but not in this particular matter Mr. Woodruff testified that property was purchased with your funds and cost about $97,000.00?

A. Yes, sir.

Q. That money you got from the Carter Oil Company runs did you?

A. Yes, sir.

Q. Did you buy the household furniture out of your funds?

A. Yes, sir.

Q. Approximately you spent about $50,000.00 for that?
A. I think somewhere around that.
Q. That came out of the money you got from the Carter Oil Company did it?
A. Yes, sir.
Q. Isn't it true from about 1920 to 1930, out of your own money, the money you got from the Carter Oil Com-
456 pany, you contributed out of that money about $300.00 a month to run the house?
A. I would not remember that now.
Q. You would not remember whether for the ten years you paid approximately $300.00 a month to run the house out of your own funds?
A. I paid some.
Q. From 1920 to 1930 you contributed regularly about $300.00 a month to maintain the household of yourself and family from your own money?
A. I don't remember.
Q. Did you contribute anything that you received to maintain the household?
A. Yes, sir.
Q. How much a month would you say it was during that time?
A. I don't remember, I will say to you I did contribute some.
Q. I will tell you that I got those figures from one of your attorneys and I am trying to get the facts from you.
A. That is probably correct.
Q. That is why I used the figures to you now.
A. I don't know just how much it was but I used considerable.
Q. You know approximately how much a month you put in each month to run the household?

By Mr. Potter: We object to that, she answered that three or four times.

By Mr. Turnbull: If you think I am after her too rough I will quit, that is all right, that is all.

Witness excused.

By Mr. Potter: I think I will rest as far as Willie Mae Woodruff's claim is concerned at this time, your Honor.

State of Oklahoma, County of Carter.

457 I, O. E. English, Court Reporter, hereby certify that on the 18th, 19th, 20th and 22nd days of November, 1940, I took the oral testimony of Mrs. Willie Mae Woodruff, and Leonard J. Woodruff in a hearing before Hon. Geo. F. Clark, Referee in Bankruptcy, at Ardmore, Oklahoma, in matter of Leonard J. Woodruff, Bankrupt. That said testimony was correctly taken in shorthand and thereafter transcribed, and that the within and foregoing is a true and correct copy of said testimony.

Witness my hand as such Reporter this the 16th day of September, 1943.

O. E. English, Court Reporter,
(Reporting this case by agreement of parties)

[WILLIE MAE WOODRUFF EXHIBITS.]

[Willie Mae Woodruff Exhibit 1.]

General Warranty Deed.

This Indenture, Made this 7th day of October, A. D. 1919, between Leonard J. Woodruff, of Carter County, in the State of Oklahoma, of the first part, and Willie May Woodruff, his wife, of the second part

Witnesseth, That in consideration of One Dollar, and love and affection, the receipt whereof is hereby acknowledged, said party of the first part does by these presents, grant, bargain, sell and convey unto said party of the second part, her heirs and assigns, all of the *the* following described real estate, situated in the County of Carter, State of Oklahoma towit: North Half of South Half of Northwest Quarter; and Southwest quarter of Southwest quarter of the Northwest quarter; and Southeast quarter of Northwest quarter of the Northwest quarter, all in Section Fifteen (15) Township Four (4) South, Range Two (2) West.....

.....

.....

To Have and to Hold the Same, Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in any wise *apertaining*, forever.

And said Leonard J. Woodruff, his heirs, executors or administrators do hereby covenant, promise and agree to and with said party of the second part, at the delivery of these presents, that he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, and discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of whatever nature and kind, and that he will Warrant and Forever

Defend the same unto the said party of the second part her heirs and assigns, against said party of the first part, his heirs or assigns, and all and every person or persons whomsoever claiming or to claim the same.

In Witness Whereof, The said party of the first part has hereunto set his hands the day and year first above written.

(Seal) LEONARD J. WOODRUFF.

State of Oklahoma, Carter County, ss.

Before me, Freeman Galt, a Notary Public in and for said County and State, on this 7th day of October, 1919, personally appeared Leonard J. Woodruff, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

(Seal) FREEMAN GALT.

My commission expires 1-29-23.

70050
V J

No. ..... General Warranty Deed from Leonard J. Woodruff to Willie May Woodruff. 15-4S-2W.

State of Oklahoma, County of Carter, ss.

This instrument was filed for record on the 7 day of Oct. 1919 at 2 o'clock P.M., and duly recorded in book D36, page 518, of the records of this office.

CLARENCE HARRIS, Clerk.

..... Deputy.

Box 718—City

(50-cent U.S.I.R. Documentary Stamp Attached)

[Willie Mae Woodruff Exhibit 2.]

The Carter Oil Company

Statement of Willie May Woodruff's Interest in Oil and Gas Run From the Following Leases During the Years 1920 to 1930, Inclusive

L. J. Woodruff Lease (W½ SW¼ NW¼ & W½ W½ SW¼ Sec. 15-4S-2W, Carter County, Oklahoma

Year in Which Oil Was Run	(Interest in Oil) January	February	March	April	May	June	July	August	September	October	November	December	Total For Year
1920	$ —0—	$ —0—	$ —0—	$ —0—	$ 3 570.17	$ 3 059.56	$ 7 022.71	$ 6 939.87	$ 7 588.53	$12 836.15	$10 731.98	$ 9 903.07	$ 61 652.04
1921	18 384.17	8 513.18	13 784.91	18 677.11	20 406.68	26 731.67	33 430.64	30 398.53	23 175.43	26 912.07	27 976.88	21 598.34	269 989.61
1922	20 833.69	16 465.14	16 274.96	13 341.32	12 803.28	9 790.44	9 226.55	7 298.38	7 232.50	6 996.42	6 804.79	7 767.42	134 834.89
1923	9 598.39	10 275.31	10 266.45	8 687.69	7 358.56	6 296.54	6 160.22	6 483.14	6 650.15	5 764.97	4 840.33	3 711.27	86 093.02
1924	4 600.43	5 412.62	6 291.69	6 062.07	6 259.01	5 304.54	5 532.04	4 886.47	4 470.29	3 118.59	2 910.38	3 174.60	59 022.73
1925	2 251.75	2 411.47	2 791.41	2 893.03	959.44	914.69	940.51	927.37	764.48	844.14	736.57	766.19	17 201.05
1926	717.48	749.22	833.33	804.94	895.65	816.42	869.81	971.57	937.15	895.19	734.30	766.27	9 991.33
1927	658.79	601.52	503.49	402.63	480.87	413.15	367.11	407.99	397.03	367.94	366.03	343.09	5 309.64
1928	369.35	358.59	353.37	344.27	353.69	343.19	356.35	361.00	319.50	361.11	327.30	322.01	4 169.73
1929	345.06	275.78	278.02	316.06	326.26	312.59	337.44	314.44	339.76	337.49	299.14	322.97	3 805.01
1930	291.59	257.31	232.28	280.90	268.82	264.34	279.39	288.37	256.10	252.83	172.56	188.42	3 032.91
Total						(Interest in Oil)							$654 101.96

May Woodruff Lease (SE¼ NW¼ NW¼ & NE¼ SW¼ NW¼ Sec. 15-4S-2W Carter County, Oklahoma)

1920	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ 61.29	$ 1 341.86	$ 622.48	$ 2 025.63
1921	561.19	398.77	1 180.51	8 332.61	11 341.65	6 444.23	3 809.33	3 069.75	2 453.74	2 548.64	3 568.02	3 768.38	47 476.82
1922	3 216.56	2 430.78	2 670.10	2 186.76	1 987.92	1 579.10	1 083.05	921.38	676.55	948.84	1 004.85	1 296.89	19 912.78
1923	1 228.90	1 438.83	1 396.63	1 266.77	827.72	886.65	739.27	699.39	622.18	613.29	451.79	475.01	10 645.83
1924	446.32	501.31	895.65	661.67	715.58	595.02	695.06	579.05	485.54	363.84	297.37	378.80	6 615.21
1925	335.04	411.64	478.93	473.53	471.65	520.40	488.69	470.70	332.32	441.41	339.38	323.31	5 087.00
1926	332.02	316.12	411.47	374.05	384.60	399.69	349.08	353.64	412.81	365.66	310.64	197.72	4 207.50
1927	304.88	253.70	219.78	177.74	176.85	178.68	143.82	172.67	176.36	168.87	146.77	200.04	2 320.16
1928	143.69	142.31	144.31	142.41	113.82	112.58	139.98	175.25	146.90	148.92	147.50	172.67	1 730.34
1929	142.84	128.54	108.58	160.24	119.48	125.44	157.99	154.24	130.76	129.65	181.91	130.64	1 670.28
1930	139.72	107.36	133.15	114.70	146.22	116.18	143.98	146.08	144.86	115.10	81.09	108.22	1 496.66
Total													$103,188.21

Totals by Years, Oil and Gas

Year	Oil	Gas	Total
1920	$ 63,677.67	$ —0—	$ 63,677.67
1921	317,466.43	63.80	317,530.23
1922	154,747.67	223.46	154,971.13
1923	96,738.85	478.49	97,217.34
1924	64,637.94	452.49	65,090.43
1925	22,288.05	378.23	22,666.28
1926	14,198.83	559.32	14,758.15
1927	7,629.80	383.30	8,013.10
1928	5,900.07	358.65	6,258.72
1929	5,475.29	359.34	5,834.63
1930	4,529.57	203.43	4,733.00
Total	$757,290.17	$3,460.51	$760,750.68

[Willie Mae Woodruff Exhibit 3.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
4624 So. Figueroa, St.,
Los Angeles, Calif.

Los Angeles, May 13, 1920

$5000 U.S. Government Third Liberty Loan 4¼'s

Price: 88 ¾	$4437.50	
Interest: M&S 15th. Accrued 1 mo. 28 da.	34.25	
Plus Commission	12.50	$4484.25

Maturity: September 15, 1928

**Bot for Wille May Woodruff* *Sold at 86.48*
Paid for out of her personal acct
(1) Lenard Woodruff Sold

Paid May 13, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By (Illegible initials).

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 4.]

The First National Bank of Los Angeles 16-3

Los Angeles, May 13, 1920

Pay to the Order of Drake, Riley & Thomas $4,484.25

.....$4484 and 25 Cts..... Dollars

No. 50 WILLIE MAY WOODRUFF

(Perforated bank stamp)—5-14-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 5.]

First National Bank of Los Angeles, Cal.

Customer's Draft.

*OK (Illegible initials).

75705

Los Angeles, Cal. Mar. 15, 1920.

.....Pay to the order of

First National Bank of Los Angeles 16-3 $25000.00

Twenty Five thousand ..... Dollars

Value received and charge to account of .....

.....

To Guaranty State Bank, Ardmore, Okla.

†(2) In

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-22-20 66-56

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp bank endorsements: First National Bank of Los Angeles, First National Bank of Ardmore, Oklahoma, Los Angeles Branch Federal Reserve Bank of San Francisco, The Federal Reserve Bank of Kansas City.

*Appears in handwriting in ink on original.
†Appears in handwriting in pencil on original.

[Willie Mae Woodruff's exhibit 6 is the original claim of Willie May Woodruff which appears at page 1.]

[Willie Mae Woodruff Exhibit 7—6 checks.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Jul. 13th 1920

Pay to the Order of Leonard Woodruff $5300.00

Five Thousand and Three Hundred 00/100 ..... Dollars

No. 4 WILLE MAY WOODRUFF

(Perforated bank stamp)—7-13-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, July 22nd 1920

Pay to the Order of Leonard Woodruff $400.00
Four Hundred 00/100 ..... Dollars

No. 6 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-22-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 14th 1920

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

No. 7 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-14-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 25 1920

Pay to the Order of Leonard Woodruff $2376.00
Twenty three Hundred and Seventy Six ..... Dollars

No. 8 a WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-25-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Nov. 13th 1920

Pay to the Order of Leonard Woodruff $900.00
Nine Hundred 00/100 ..... Dollars

No. 8 b WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 11-13-20.

On reverse—Endorsed in pencil by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 13th 1920

Pay to the Order of Leonard Woodruff $250.00

*250—

Two Hundred and Fifty 00/100 ..... Dollars

No. 8 c WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 12-13-20.

On reverse—Endorsed in ink by Leonard Woodruff.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 8.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Jul. 13 1920

Pay to the Order of Drake, Riley & Thomas $8657.47

$8657 and 47 cts. Dollars

No. 49 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-13-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 8-a.]

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
Los Angeles, Calif.,

Los Angeles, July 20, 1920

$10,000 U. S. Gov't Liberty Loan Fourth 4¼'s,
Price: 85.18 $8518.00

Interest: A&O 15th. accrued 3mos. 6ds. 113.33

Plus Commission (¼ of 1%) 25.00 $8656.33

Maturity: October 15th. 1938

*Bot for Wille May Woodruff. Paid for out her personal acct. LEONARD WOODRUFF (5).

Paid Jul. 22, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake,

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 9.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 22nd 1920

Pay to the Order of Drake, Riley & Thomas $10,384.23
Ten Thousand Three Hundred and Eighty Four 23/100 Dollars

No. 37 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-22-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 10.]

The First National Bank of Los Angeles 116-3]

Los Angeles, Oct 2nd 1920

Pay to the Order of Drake, Riley & Thomas $2452.92
$2452 and 92 cts. Dollars

No. 38 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-2-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 10-a.]

Drake, Riley & Thomas.
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
4624 South Figueroa,
Los Angeles, Cal.

Los Angeles, Oct. 2, 1920

$3000 Southern California Edison Co. Gen. Mtge. 5's

Price: 80½ 2415.00
Interest: J&J 1st. Accrued 3 mo. 1 da. 37.92 2452.92

Maturity: November 1, 1939

D. R. & T. Due Bill #1071

Paid Oct. 2, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake.

[Willie Mae Woodruff Exhibit 11.]

The First National Bank of Los Angeles 116-3

Los Angeles, Sept. 28th 1920

Pay to the Order of Drake, Riley & Thomas $5,114.44

Five Thousand and One Hundred Fourteen 44/100 Dollars

No. 40 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-28-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 11-a.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
Los Angeles, Calif.,

Los Angeles, Sept. 28, 1920

$5,000 Government of the French Republic 8's.

Price: 102 $5,100.00

Interest: M&S 15th. accrued 13ds. 14.44 $5,114.44

Maturity: September 15th. 1945

No: Interim Cert. #264.

These bonds are the personal property of Wille Mae Woodruff bot with her money. LEONARD WOODRUFF.

Paid Sep. 28, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By *DGD.*

Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 12.]

The First National Bank of Los Angeles [16-3]

Los Angeles, April 26th, 1920

Pay to the Order of Drake Riley & Thomas $458.68

Four Hundred Fifty Eight 68/100 Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—4-27-20.

On reverse written in pencil appear the words *inst or exp.* Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 12-A.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff
L. A.

Los Angeles, 4/26/1920

500 U. S. Govt. L.L. 3rd 4¼ Due 9/15/1928 C 91		*Sold @* 455.00	*86.48*
	Int.	2.42	
Plus com ¼ of 1%		1.25	$458.67

**Bot for Wille May Woodruff*

sold

Paid Apr. 26, 1920. Drake, Riley & Thomas, Los Angeles, Cal., By H. J. Drake.

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 13.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 13th, 1920

Pay to the Order of Drake, Riley & Thomas $3134.59
Three Thousand One Hundred Thirty Four 59/100 Dollars

No. 51 WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 5-14-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 13-A]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff,
L. A.

Los Angeles, 5/13/1920

3500 U. S. Govt L.L. 3rd 4¼ Due 9/15/1928	C 88⅝	3101.88	
	Int—1-28 da	23.96	
		3125.84	*Sold at* 86.375
	Plus com ¼ of 1%	8.75	
			$3134.59

**Bot for Wille May Woodruff with her personal money.*

Leonard Woodruff *Sold*

Paid May 13, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By—

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 14.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 7th, 1920

Pay to the Order of Drake, Riley & Thomas $6240.70
Six Thousand Two Hundred and Forty 70/100 ..... Dollars

No. 42 WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 9-7-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 14-A.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
Los Angeles, Calif.

Los Angeles, Sept. 7, 1920

$7,200 U. S. Gov't Liberty Loan
Fourth 4¼'s,
Price: 85 $6,120.00
Interest: A&O 15th. accrued 4mos.
22ds. 120.70 $6240.70

Maturity: October 15th, 1928.

Personal Property
Wille May Woodruff
Leonard Woodruff

Paid Sep. 7, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By HJD.

Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 15.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 13th, 1920.

Pay to the Order of Drake, Riley & Thomas $15,980.63
Fifteen Thousand and Nine Hundred Eighty 63/100 Dollars

No..... WILLIE MAY WOODRUFF.

(Perforated bank stamp)—Paid 12-13-20.

On reverse written in pencil appears the word *Bonds*. Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 16.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.,
City

Los Angeles, Feb. 4, 1921

Dec. 8th. 200 shs. Montgomery Ward & Co. Stock	$3445.00
Dec. 8th 125 shs. General Motors Stock	1903.75
Dec. 4th. 200 shs. Montgomery Ward & Co. Stock	3945.00
Dec. 4th. 175 shs. General Motors Stock	2664.38
Dec. 9th 100 shs. U. S. Steel Corp'n Stock	8022.50
Dec. 15th 100 shs. Sears Roebuck Co. Stock	9322.50
Dec. 15th 100 shs. American Locomotive Stock	7997.50
Dec. 23rd 100 shs. U. S. Steel Corp'n Stock	7835.00
Dec. 23rd 100 shs. American Locomotive Stock	7872.50
Dec. 24th $10,0000 U. S. Gov't Second Liberty Loan 4¼'s	8438.54

Dec. 24th 30,000 U. S. Gov't Fourth Liberty Loan 4¼'s	25,589.87	
Dec. 29th 200 shs. Kennecott Copper Co. Stock	3145.00	
Dec. 29th 100 shs. American Smelting & Refining Co. Stock	3085.00	
Dec. 31st short sale 200 shs. Montgomery Ward Stock	8.00	
Jan. 26th $13,000 City & County of San Francisco 5's	12,386.40	
Feb. 3rd. 100 shs. Sears Roebuck Co. Stock	8622.50	
Feb. 3rd. 100 shs. Sears Roebuck & Co. Stock	8422.50	
		$122,705.94

Credit:

Nov. 12th. By cash	$13,000.00	
Dec. 13th. " "	15,980.63	
Dec. 23rd. " "	11,136.90	
Dec. 23rd. 400 shs. Montgomery Ward & Co. Stock	5069.37	
Dec. 23rd. 300 shs. General Motors Co. Stock	3795.00	
Dec. 23rd. 100 shs. U. S. Steel Corp'n Stock	7777.50	
Dec. 23rd. 100 shs. American Locomotive Stock	7827.50	
Dec. 24th. $10,700 U. S. Steel Corp'n Stock	8999.89	
Dec. 24th. 50 U. S. Gov't Second 4's	43.66	
Dec. 24th. $850 U. S. Gov't Third Liberty Loan 4¼'s	7744.01	
Dec. 24th. 20,000 U. S. Gov't Fourth Liberty Loan 4¼'s	17,009.92	
Dec. 31st. 100 shs. American Locomotive Stock	8271.00	
Dec. 31st. 100 shs. U. S. Steel Corp'n Stock	8121.00	

Jan. 15th. $1500 U. S. Gov't Third Liberty Loan 4¼'s	1369.37	
Jan. 17th. 50 U. S. Gov't First Liberty Loan 4¼'s	43.39	
Jan. 17th. 250 U. S. Gov't Second Liberty Loan 4¼'s	219.66	
Jan. 17th. 200 U. S. Gov't Third Liberty Loan 4¼'s	183.15	$116,563.95

Credit: Balance Due Us: $ 6,141.99

Interest @ 6% for 22 days, Nov. 12 to Dec. 4 on $13,000	$47.67	
Interest @ 6% for 4 days, Dec. 4 to Dec. 8 on $6,391	4.22	51.89
	Balance Due $	6,090.10

Paid Feb. 5, 1921. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake.

[Willie Mae Woodruff Exhibit 17.]

Los Angeles, Cal., April 12, 1920.

Pay to the Order of Drake, Riley & Thomas $9149.46

R

Nine thousand One hundred Forty nine and 46/100 Dollars

To First National Bank
Los Angeles

WILLIE MAY WOODRUFF.
Address 4624 So. Figueroa St.
Phone.....

(Perforated bank stamp)—Paid 4-12-20.

On reverse written in pencil appears the word *Bonds*.

Rubber stamp endorsement, Drake, Riley & Thomas.

*Word and letter in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 17-a.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.,
Los Angeles, Calif.

Los Angeles, April 10, 1920

$10,000 U. S. Gov't Fourth 4¼'s, Price: 89.28	$8,928.00	
Interest: A&O 15th. accrued 5mos. 27ds.	208.96	
Plus Commission (1/8 of 1%)	12.50	$9,149.46

Maturity: October 15th. 1938

Sold
for Bot Wille May Woodruff
Paid for out her acct.
Leonard Woodruff

These bonds sold @ 84.36

Paid Apr. 12, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By D.G.D.

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 18.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Apr. 16, 1920

Pay to the Order of Drake, Riley & Thomas $8691.68
..... $8691 and 68 Cts. .....Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 4-17-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.
Los Angeles, Calif, A/C Wille May Woodruff

Los Angeles, April 15, 1920

$10,000 U. S. Government Fourth Liberty Loan 4¼'s		
Price: 86.78	$8678.00	
Interest: A&O 15th. Accrued to Apr. 16	1.18	
Plus Commission (⅛ of 1%)	12.50	$8691.68

Maturity: October 15th, 1938.

Paid Apr. 16, 1920. Drake, Riley & Thomas, Los Angeles, Cal., by D.G.D.

[Willie Mae Woodruff Exhibit 19.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 8th, 1920.

Pay to the Order of F. Natl. Bank of Los Angeles $1816.22
Eighteen Hundred and Sixteen 22/100.....Dollars

No. 49 WILLE MAY WOODRUFF. *H

(Perforated bank stamp)—Paid 6-8-20.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 20.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff,
Los Angeles, Calif.

Los Angeles, July 22, 1920

$2000 U. A. Gov't Fourth Liberty Loan 4¼'s		
Price: 85	1700	
Interest: A&O 15th accrued 3 mos. 7ds.	22.90	
	1722.90	
Plus Commission	5.00	$1727.90

Maturity: October 15th 1938

*Bot for Wille May Woodruff
paid out of her personal acct.
Leonard Woodruff*

Paid Jul 22, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H J Drake.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 21.]

The First National Bank of Los Angeles [16-8]

Los Angeles, July 2nd, 1920

Pay to the Order of Leonard Woodruff $350.00
Three Hundred and Fifty 00/100.....Dollars

No. 13 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-2-20.

On reverse—Endorsed in ink by Leonard Woodruff.

[Willie Mae Woodruff Exhibit 22.]

Security First National Bank of Los Angeles
1st Natl Office Branch No. 22279
Jan 3 1931

Received from Wille May Woodruff .....
Five Thousand One & 20/100 ..... Dollars $5001.20/100
For Telegraphic Transfer of 5000.00/100 to 1st Nat Bk Ardmore Okla Credit Acct Herman Woodruff.....

Transfer $5000.00/100

Telegram and Costs $ 1.20/100

It is understood that in forwarding this amount the undersigned will use any means of transmission or communication commonly in use, including telephone and telegraph, by wire or wireless and shall not be responsible for any inaccuracy, interruption or delay in transmission or delivery of telegram and does not guarantee payment in cities where it has no correspondent.

*18 a SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
By WILLIAM V. DAVIS

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 23.]

A. O. Slaughter, Anderson & Fox
443 So. Spring St. Phone FAber 5111

No. R 27507

Los Angeles, Cal., 4/23 31

Lenard Woodruff Account (Illegible initial)
.....

We have this day received the following securities:

No. Shares	Security	Certificate No.	In Name of	Remarks
21M	Chicago Burlington & Quincy 5% 2/1/11 (F & A)	M28858/78-2/1/30	& Subsequent Cpns. Attch (21x1M)	

Respectfully Yours,

A. O. SLAUGHTER, ANDERSON & FOX
KC Cashier

(19) (Box)

[Willie Mae Woodruff Exhibit 24.]

(100) Los Angeles, May 16, 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
A. O. Slaughter, Anderson & Fox $5000.00
Five Thousand 00/100 ..... Dollars

(20) WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB 5-19-31.

On reverse:

Rubber stamp endorsement—A. O. Slaughter, Anderson & Fox.

O.K. for deposit: By Spence, Vice President.

Rubber stamp endorsement—Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 25.]

A. O. Slaughter, Anderson & Fox
443 South Spring Street
Los Angeles

Members
New York Stock Exchange
Chicago Stock Exchange
Chicago Curb Exchange
Chicago Board of Trade
New York Curb Exchange
(Associate)

Jan. 26, 1933.

Mr. Leonard Woodruff

We acknowledge receipt from yourself of the following securities:

70	shs	See	1st	Natl	#022187	n/o	Leonard	Woodruff
50	"	"	"		#014659	"	"	"
15	"	"	"		#03602	"	"	"
100	"	"	"		#4289	"	Willie May	Woodruff

These securities are to be entered into your account with ourselves as instructed.

Very truly yours

O/O A. O. SLAUGHTER, ANDERSON & FOX
(29) O. E. DAVIDSON.

[Willie Mae Woodruff Exhibit 26.]

No. 22885 12/31

First National Bank of Los Angeles, Cal.

Received of Wille May Woodruff

for Collection

the following described items:

On State of Utah
At Salt Lake City Utah
5 Bonds @ 5000 each
71-2-3-4-5-

Always Bring This Receipt

Dated Due
No. Amt. $25000.00
Memo. 78821
Leonard Woodruff

First National Bank of Los Angeles

(25) By (Illegible initials), Collection Teller

[Willie Mae Woodruff Exhibit 27.]

(100) Los Angeles, 6/1/31 1931 No.

First National Office

Security-First National Bank of Los Angeles 16-4/12

Seventh & Spring

Pay to the order of

Slaughter, Anderson & Fox $2500.00

Twenty five hundred dollars only ..... Dollars

24 Wille May Woodruff

(Perforated bank stamp)—FNB—LA 6-2-31.

On reverse:

Rubber stamp endorsement—A. O. Slaughter, Anderson & Fox.

Rubber stamp endorsement—Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 27-a.]

Original

Anderson & Fox

443 So. Spring St. Los Angeles, Cal.
Phone FAber 5111

C 16044

$2500.00 Date 6-1-1931 (Illegible initial)

Received of Leonard Woodruff
Address .....
Twenty five hundred no/100 ..... and /100 Dollars
on a/c
Cash .....
Check 16-4 Wille May Woodruff

ANDERSON & FOX
24 LUCAS, Cashier

[Willie Mae Woodruff Exhibit 28.]

(100) Los Angeles, May 18, 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
A. O. Slaughter Anderson & Fox $5,000.00
Five Thousand 00/100 ..... Dollars

(21) WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-20-31.

On reverse:

Rubber stamp endorsement, A. O. Slaughter, Anderson & Fox.

O.K. for deposit: By Spence, Vice President.

Rubber stamp endorsement, S. F. N. B.

Rubber stamp endorsement, Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 28-a.]

Original

Anderson & Fox

Beverly Wilshire Hotel Beverly Hills

C 20753

$5000.00 Date 5/19/31
Received of Wille May Woodruff
Address .....
Five Thousand Dollars .....xx/100 Dollars

For Credit on Acc't Leonard Woodruff

Cash .....
Check √ 16-4

ANDERSON & FOX
(21) ROBERT CORLIN, Cashier

[Willie Mae Woodruff Exhibit 29.]

(100) Los Angeles, May 21st 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
Slaughter Anderson & Fox $12,500.00
Twelve Thousand Five Hundred 00/100 ..... Dollars

22 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-23-31.

On reverse:

Rubber stamp endorsement, A. O. Slaughter, Anderson & Fox.

Rubber stamp endorsement, Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 29-a.]

Original

Anderson & Fox
Beverly Wilshire Hotel Beverly Hills
C 20758

$12,500.00 Date 5/22/31

Received of Wille May Woodruff
Address .....
Twelve Thousand Five Hundred Dollars ....xx/100 Dollars

"Credit to Acc't of Leonard Woodruff" On Stock Acc't.
Cash .....
Check √16-4

ANDERSON & FOX
22 ROBERT CORLIN, Cashier

[Willie Mae Woodruff Exhibit 30.]

First Securities Company
Owned by the Stockholders of
The First National Bank of Los Angeles
——and the——
Los Angeles Trust & Savings Bank
Los Angeles
Bond Department
First National Bank Office

July 22 1922.

Mrs. Willie May Woodruff,
262 S. Mariposa Ave.,
Los Angeles, Cal.

Dear Mrs. Woodruff:

Complying with Mr. Woodruff's instructions, we are today charging your account with the First National Bank of Los Angeles, $14,406.24 being payment in full for:

$15,000 par value New York Central Railroad
Refunding & Improvement Mortgage,
5% Bonds, due 2013 @94½ and accrued Int.

Our receipt #1242 covering the transaction is enclosed

herewith and upon arrival of the bonds, we shall be pleased to notify you.

With kind personal regards, I am

Very truly yours,

FIRST SECURITIES COMPANY,
By O. H. Shock,
First National Bank Office.

*(13)

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 31]

Bond Department
First Securities Co.

Received from Wille May Woodruff
Name Address

($15,000) Fifteen Thousand Par Value
Interim Receipts for, or temporary N.Y. Central Railroad Co.
Name of Issue

Ref. & Imp. Mtg. 5%, 2013 Series C.
($ 100 Denomination .....
Numbers ($ 500 Denomination .....
($1000 Denomination T.M. 59573 to 59587

The permanent coupon securities described below, to be received in exchange for the above, will be delivered only upon the return of this receipt.

Received the following Permanent Securities:

($ 100 Denomination.....
Numbers ($ 500 Denomination.....
($1000 Denomination.....

Bond Department
.....
First Securities Co.
Dated..... 192....
By E. V. Forue,
Dated 3/9, 1923

*(13)

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 32]

Klamath Falls, Ore., Oct. 30th, 1923

At sight ..... Pay to the Order of
The First National Bank of Klamath Falls, Oregon,
$14,000.00
Fourteen Thousand ..... Dollars
With Exchange

To First National Bank
Los Angeles, Cal.

Value Received and Charge to Account of
WILLIE MAY WOODRUFF

*(16)

(Perforated bank stamp)—Paid 11-2-23

On reverse:

Rubber stamp endorsement, Los Angeles Branch, Federal Reserve Bank of San Francisco.

Rubber Stamp Endorsement, Wells Fargo Nevada National Bank of San Francisco.

Rubber stamp endorsement, First National Bank, Klamath Falls, Oregon.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 33.]

The First National Bank of Lakeview

Lakeview, Oregon, Oct. 29, 1923

At Sight
Pay to the Order of First National Bank of Lakeview,
Lakeview, Oregon $7500.00
Exactly Seven Thousand Five Hundred Dollars ..... Dollars
With Exchange and Collection Charges
For Deposit
For value received and charge to account of

To First National Bank
Los Angeles, Calif.

WILLIE MAY WOODRUFF

*(14)

(Perforated bank stamp)—Paid 11-2-23.

On reverse:

Rubber stamp endorsement, The Crocker National Bank of San Francisco, Cal.

Rubber stamp endorsement, First National Bank, Lakeview, Oregon.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 34]

The First National Bank of Lakeview

Lakeview, Oregon, Oct. 29, 1923

At Sight

Pay to the Order of First National Bank of Lakeview, Lakeview, Oregon.....$1500.00

Exactly Fifteen Hundred Dollars No Cents.....Dollars

With Exchange and Collection Charges

For First payment on the E. O. Pratt Cattle.

For value received and charge to account of

To First National Bank

*(15) Los Angeles, Calif. WILLE MAY WOODRUFF

*Appears in handwriting in pencil on original.

(Perforated bank stamp) 11-2-23.

On reverse:

Rubber stamp endorsement, The Crocker National Bank of San Francisco, Cal.

Rubber stamp endorsement, First National Bank, Lakeview, Oregon.

[Willie Mae Woodruff Exhibit 35]

[Western Union Telegram]

Received at 166 North Center Street, Casper, Wyo.

1922 Sep 21 PM 1 24

DA 181 '13

G Los Angeles Calif 21' 1212P

Mrs Willie May Woodruff
Casper Wyo

Transferred Today Thirty Thousand Dollars to Credit Leonard Woodruff as Requested Your Telegram

First Natl Bank of Los Angeles.

(11)
15,000.
6,000.
11,801.
3,200.
2,600.
800.
900.
3,000.

43,300
530

43,830.

*Figures in italics appear in handwriting on original.

[Willie Mae Woodruff Exhibit 36.]

[Western Union Telegram]

Received at 114 Wall Street, Spokane, Wash.

1922 Sep. 16 PM 2 33

POR262 36 NL
G LosAngeles Calif 16

Leonard Woodruff
P O General Delivery Spokane Wash

Can You Arrange Credit of About Thirty Five Thousand for Your Account as Bank Expect Call From Comptroller Any Day Stop Your Account Over About Thirty Three Thousand Wille May Balance About Twenty Six Thousand Wire Collect

O H Shock

*(11)

*Appears in handwriting on original.

[Willie Mae Woodruff Exhibit 37.]

Memorandum Los Angeles, Cal., Sep. 21, 1922

Debit Willie May Woodruff $30000.00
For transfer & Credit Leonard Woodruff as per telegram from Cody, Wyo. Sept 21/22

Approved:

A. C. May, Junior Vice-President.

(Perforated bank stamp)—Paid 9-21-22.

The First National Bank of Los Angeles

[Willie Mae Woodruff Exhibit 38.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
and the Los Angeles Trust & Savings Bank.

Los Angeles

Bond Department

First National Bank Office.

February 24, 1922.

Mrs. Willie May Woodruff, 2620 So. Mariposa St., Los Angeles, Cal.

Dear Madam: We beg to advise you that the following securities are now ready for delivery:

$14,000 par value Chicago, Burlington & Quincy Railroad Co., First and Refunding Mortgage 5's, due 2/1/71.

If you will kindly present your receipt at window #40, First National Bank, we shall be pleased to deliver the same to you.

Trusting to be of service to you in the future and thanking you for past favors, we are

Yours very truly,

FIRST SECURITIES COMPANY,
By W. A. PIKE.

*Paid & Delivered March 4th
(9)

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 39.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 2nd 1920

Pay to the Order of First Securities Co. $4875.97
Forty eight hundred seventy five 97/100 Dollars

No. 39 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-4-20.

On reverse—Rubber stamp endorsement, First Securities Company.

The First National Bank of Los Angeles [16-3]

Los Angeles, Feb. 24th, 1921

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

No. 8 d WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 2-24-21.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, June 10th 1921

Pay to the Order of Leonard Woodruff $200.00
Two Hundred 00/100 ..... Dollars

No. 8 e WILLE MAY WOODRUFF

Rubber stamp—Received Through Los Angeles Clearing House Jun. 11, 1921. F.N.B. of L.A.

(Perforated bank stamp)—Paid 6-11-21.

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp endorsement, Citizens Trust & Savings Bk.

The First National Bank of Los Angeles [16-3]

Los Angeles, June 17th 1921

Pay to the Order of Leonard Woodruff $2500.00
Twenty Five Hundred 00/100 ..... Dollars

No. 8 f WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-15-21.

On reverse—Endorsed in ink by Leonard Woodruff.

Los Angeles, Cal. July 27th 1921 No.....

Western Avenue Branch
Citizens Trust and Savings Bank 16-14

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

8 g WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-27-21 16-14.

On reverse—Endorsed in ink by Leonard Woodruff.

Los Angeles, Cal. Sept. 3, 1921 No.....

Western Avenue Branch
Citizens Trust and Savings Bank 16-14

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

8 h WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-3-21 16-14.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

ck (Illegible initials).

Los Angeles, Oct. 10th 1921

Pay to the Order of Leonard Woodruff $16,587.50
Sixteen Thousand Five Hundred Eighty Seven 50/100 Dollars

8 j WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-13-22.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 2, 1922

Pay to the Order of Leonard Woodruff $5,000.00
Five Thousand 00/100 ..... Dollars

No. 10 WILLE MAY WOODRUFF

Rubber stamp—Clearing house.

(Perforated bank stamp)—Paid 12-9-22.

18-6

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp endorsements: The Federal Reserve Bank of Kansas City; Federal Reserve Bank of San Francisco, Los Angeles Branch; American National Bank, Ardmore, Oklahoma.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 11th 1922

Pay to the Order of Leonard Woodruff $10,750.00
Ten Thousand Seven Hundred and Fifty 00/100 Dollars

No. 10 a WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 12-19-22.

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp bank endorsements: Exchange National Bank, Tulsa, Oklahoma; American National Bank, Ardmore, Okla.; (Illegible stamp) Clearing House.

The First National Bank of Los Angeles [16-3]

Los Angeles, May 31*th* 1924

Pay to the Order of Leonard Woodruff $1,000.00
One thousand 00/100 ..... Dollars

No. 17 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-31-24.
On reverse—Endorsed in ink by Leonard Woodruff.

[Willie Mae Woodruff Exhibit 40.]

No.....

(100) Los Angeles, May 20, 1931

Pay to the Order of Banks, Huntley & Co. $15,000.00
Fifteen Thousand 00/100 ..... Dollars

First National Office
Security-First National
Bank of Los Angeles 16-4/12
Seventh & Spring Los Angeles
23

WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-21-31.

On reverse:

Rubber stamp endorsements: Banks Huntley & Co.; Bank of America National Trust & Savings Association.

[Willie Mae Woodruff Exhibit 41.]

First National Bank Los Angeles, Cal.

Memorandum Los Angeles, Cal., Oct. 14 1921

Debit Willie May Woodruff $50,366.67

Fifty thousand three hundred sixty six & 67/100 Dollars

For 50000 State of Arizona Tax Anticipation Bonds.

W. T. S. HAMMOND, Cashier

(Illegible initials)

(Perforated bank stamp)—Paid 10-14-21.

[Willie Mae Woodruff Exhibit 42.]

Bond Department

First Securities Company

Los Angeles, August 1, 1922

Leonard Woodruff

.....

.....

Sold by Mr. Schock

Description	@		Total
Bot from			
$50,000 par value Arizona Tax Anticipation, 6% Gold Bonds, due 9/15/22	100.0149	$50,007.45	
Accrued Interest 3/15 to 8/1		1,133.33	
Bond Nos. 316/65			$51,140.78
Sold To			
20 bonds, (2500 guilders) Kingdom of Netherlands, 6% Gold Bonds, due 3/1/72	960	19,200.00	
Accrued Interest 7/25 to 8/1		19.20	19,219.20
Bond Nos. o 14297/316			
Balance due you check herewith			$31,921.58

Paid Aug. 1, 1922. First Securities Company Bond Department.

Received Above Described Securities—Due Bill EM No. .....

[Willie Mae Woodruff Exhibit 43.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 18th, 1921

Pay to the Order of The First National Bank of Los Angeles $14,353.12

Fourteen Thousand Three Hundred Fifty Three 12/100 ..... Dollars

No..... WILLE MAY WOODRUFF *C

On reverse appear the words in pencil "maybe bonds."

(Perforated bank stamp)—Paid 5-19-21.

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 44.]

The First National Bank of Los Angeles

Bond Department No. 280

Dated 5/18/21

Received from Willie May Woodruff, 262 So. Mariposa
Name Address

$ Fourteen Thousand Three Hundred Fifty Eight 55/100 ..... Dollars

Being Payment for $ Fifteen thousand Par Value Northern Pac. Great Northern Joint 15 yr. 6½ Conv. Bonds @ 96½ less accrued interest from 5/18/21 to 7/1/2. due 7/1/36. Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
The First National Bank
of Los Angeles.
By O. H. Schock

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 45]

Bond Department
The First National Bank of Los Angeles
Seventh and Spring Streets

Los Angeles, Cal., May 18, 1921.

Sold To
Willie Mae Woodruff,
262 S. Mariposa Street,
Los Angeles, California. Sold by Mr. O. H. Schock.

Description	@	Total
$15,000.00 par value. Northern Pacific-Great Northern Joint 15-yr., 6½%, Conv. Gold Bonds, due 7/1/36, (C.B. & Q. Collateral)	96½	$14,475.00
Less 6½% accrued interest from 5/18 to 7/1		116.45 $14,358.55

Denomination Numbers
@ $ 500
@ $1000

Due & Collected
Jan. 1st 1922

Paid (date illegible), The First National Bank of Los Angeles Bond Department. By C. D. Jones.

Matter in italics appears in handwriting on original.

[Willie Mae Woodruff Exhibit 46.]

Memorandum Los Angeles, Cal., 12/14/21

Debit Willie May Woodruff.....$9709.69
For 10 M County of Eastland Texas 5½% Bonds due 1952 @ 96.44 Acc Int to 12 14/21. Charged as per inst. from Mr. Leonard Woodruff 12/14/21.

W. T. S. Hammond, Cashier
JHD. By (signature illegible)
(Perforated bank stamp)—12-15-21.

On reverse written in pencil "*Bonds*".

First National Bank, Los Angeles, California

[Willie Mae Woodruff Exhibit 46-a.]

No. 666

The First National Bank of Los Angeles

Bond Department

Dated 12/14/21

Received from Mrs. Willie May Woodruff, 262 So. Mariposa
$ Ninety seven hundred nine 69/100.....Dollars
Being Payment for $ Ten thousand Par Value
County of Eastland, Texas, 5½% Bonds due 1952.
@ 96.44 and accrued interest to 12/14/21.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
Hold Securities First Securities Company
Forward Due Bill By O. H. Shock
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 46-b.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
December
Ninth
1921

Government, Municipal
and
Corporation Bonds
Members Los Angeles
Stock Exchange

Leonard Woodruff, Esq.,
4624 So. Figueroa St.,
Los Angeles, Cal.

My dear Mr. Woodruff:—

I am holding for you

$10,000 County of Eastland Texas
Serial 5½% Highway Bonds, Series E,
Due 1948,
On a 5.75% basis,

in the expectation that you will want to trade something else that you have that is taxable for them. Although of course

there is no obligation on your part to take them, I believe that you ought to have this block.

The price on the 1948 maturities is 96.64 and interest.

Yours sincerely,

J. W. DUNHAM,
Sales Manager.

JWD/Mc

[Willie Mae Woodruff Exhibit 47.]

The First National Bank of Los Angeles [16-3]

Los Angeles, March 18th, 1921

Pay to the Order of Drake, Riley & Thomas, $15,000.00
Fifteen Thousand and 00/100.....Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-18-21.

On reverse written in pencil "Bonds"

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 47-a.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
March
Twenty Second
1921

Government, Municipal
and
Corporation Bonds
Members Los Angeles
Stock Exchange

Leonard Woodruff, Esq.,
4624 South Figueroa,
Los Angeles, California.

My dear Mr. Woodruff—

Enclosed find statement of your account with us to date, which shows a balance due you of $734.84, which I presume you want left with us as a credit balance, but if you prefer I will be very glad to send you a check.

Yours sincerely,

JWD:FS J. W. DUNHAM.

[Willie Mae Woodruff Exhibit 47-b.]

Sold To
Leonard Woodruff, Esq.,
4624 So. Figueroa St.,
Los Angeles, Cal.

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building
Los Angeles, March 22, 1921

Feb.	25	300 shs. Missouri *Kanses* & Texas Stock √	$ 787.50	
Mar.	9	$4000 State of San Paulo 8's √	3,960.44	
	10	200 shs. Sears Roebuck & Co. Stock √	15,345.00	
	11	300 shs. Cuban American Sugar Co. Stock √	7,830.00	
	11	300 shs. General Motors Co. Stock √	3,855.00	
	11	100 shs. Sears Roebuck & Co. Stock √	7,372.50	
	12	200 shs. Sears Roebuck & Co. Stock √	14,645.00	
				$53,795.44

Credits:

Mar.	9	By Cash	$ 787.50	
	9	$4000 Southern Cal. Edison Co. 5's	3,397.78	*sold
	11	By Cash	15,345.00	
	15	By Cash	20,000.00	
	18	By Cash	15,000.00	
				$54,530.28
		Balance Due You	$ 734.84	

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 48.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 17th, 1921

Pay to the Order of Drake, Riley & Thomas $10,198.92
Ten Thousand One Hundred Ninety-Eight 92/100.....Dollars

No..... WILLE MAY WOODRUFF.

On reverse written in pencil "Bonds"

Rubber stamp endorsement Drake, Riley and Thomas

[Willie Mae Woodruff Exhibit 48-a.]

Los Angeles, Cal., 5/17 1921

Received of Wille May Woodruff

The Securities Listed Below

Number Shares or Par Value of Bonds	Security	Certificate or Bond Number	In Name of	Remarks
Check $10,198.92 on a/c to balance to date				
Checks on Exch Natl Bank of Tulsa—				
	#123572—			$4808.16
	√120486			544.23
	121550			636.28
	122518			3524.45
				9513.12
	Pierce Oil Corpn A 914		$349.75	
	B ford		9513.12	
(36)			$9862.87	

DRAKE, RILEY & THOMAS
By J. W. DUNHAM

over

This is a deposit to my credit on this date May 17th, 1921

*Word in italics in handwriting on original.

with Drake, Riley & Thomas. All other bonds & stocks being previously paid for in full.

Kelly Springfields

(15,000 paid for
(15,000 U. S. Brazil paid for
(not delivered

Delivered June 17th, 1921

(30)

[Willie Mae Woodruff Exhibit 49]

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 31st, 1921

Pay to the Order of The First National Bank of Los Angeles $26,000.00

Twenty Six Thousand 00/100.....Dollars

No..... WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 10-31-21

On reverse written in pencil is the endorsement of W. C. Bryan.

[Willie Mae Woodruff Exhibit 49-a.]

No. 466

The First National Bank of Los Angeles

Bond Department

Willie May Woodruff Dated 10/31/21

Received from Leonard Woodruff, 262 So. Mariposa
Name Address

$ Twenty six thousand.....Dollars

Being payment for $ Twenty five thousand Par Value State of Ariz. 6% Bonds due 9/15/22 @100.25 and accrued

interest to 10/31/21. Surplus to be credited back to same a/c with 1st Nat. Bk., L.A.

Delivery of the above described securities, or a due bill therefor. Will be made in accordance with instructions below.

Bond Department
First Securities Company.
By.....

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 49-b.]

The First National Bank of Los Angeles

In Account With

Willie May Woodruff
262 So. Mariposa Ave.
October 31, 1921

$25,000 State of Ariz. Tax Anticipation Bonds	@100.25	25,062.50	
Accrued Int. 1 mo. 15 days	@ 6%	187.50	
			25,250.00

25 @ $1,000 Nos. 401/425 inc.

[Willie Mae Woodruff Exhibit 50.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
May
Twenty-fourth
1921

Government, Municipal and Corporation Bonds
Members Los Angeles Stock Exchange

Leonard Woodruff, Esq.
262 S. Mariposa,
Los Angeles, California.

My dear Mr. Woodruff—

We take pleasure in confirming sale to you, when, as and if issued, for the account of Wille May Woodruff, of—

$10,000 Government of the French Republic
20-year External 7½% Bonds
Due June 1, 1941
@ 95½ and interest

We enclose herewith statement of the transaction and an Interim Certificate covering this purchase so that your funds will be drawing interest at the coupon rate.

Yours sincerely,

JWD:FS J. W. DUNHAM.

[Willie Mae Woodruff Exhibit 51.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 7th 1921

Pay to the Order of Drake Riley & Thomas - $12,745.00
Twelve Thousand Seven Hundred Forty Five 00/100 Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—7-(illegible)-21.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas."

[Willie Mae Woodruff Exhibit 51-a.]

Bond Department

The First National Bank of Los Angeles

Seventh and Spring Streets

Los Angeles, Cal., April 25, 1921.

Sold To

Willie May Woodruff 262 So. Mariposa St., Los Angeles, Calif. Sold by Mr. O. H. Schock

Description	@	Total
$3000 Par Value Turlock Irrigation District 6% Gold Bonds, due 7/1/51	100	3000.00
6% Accrued Interest From 1/1 to 4/25		57.00
		$3057.00

Denomination	Numbers
@ $500	
3 @ $1000	Perm. 2278 80

Paid Apr. 26, 1921. The First National Bank of Los Angeles Bond Department. By C. D. Jones.

[Willie Mae Woodruff Exhibit 52.]

The First National Bank of Los Angeles

Bond Department

No. 217

Dated 4/25/21

Received From Willie May Woodruff (Name) 262 So Mariposa (Address)

$ Three thousand fifty seven and 20/100 ..... Dollars

Being Payment for $ Three thousand ..... Par Value Turlock Irrigation Dist. Serial 6% Bonds @ par and accrued interest to 4/25/21 due 7/1/51

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

BOND DEPARTMENT
THE FIRST NATIONAL BANK OF LOS ANGELES
By O. H. SCHOCK.

[Willie Mae Woodruff Exhibit 53.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 6th 1921

Pay to the Order of The First National Bank of Los Angeles *M $15109.38

Fifteen Thousand One Hundred Nine 38/100 Dollars

*M

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-7-21.

*Appears in handwriting in red ink on original.

[Willie Mae Woodruff Exhibit 54.]

The First National Bank of Los Angeles [16-3]

Los Angeles, March 30th 1921

Pay to the Order of The First National Bank of Los Angeles $5000.00

Five Thousand 00/100 ..... Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-31-21.

[Willie Mae Woodruff Exhibit 55.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 29th 1921

Pay to the Order of The First National Bank of Los Angeles $25,000.00

Twenty Five Thousand 00/100 ..... Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—8-8-21.

[Willie Mae Woodruff Exhibit 56.]

Bond Department

First Securities Company

Los Angeles, March 4, 1922

Sold To

Willie Maye Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description	@		Total
$5,000 pv. Kingdom of Netherlands, 50-Yr. 6% Sinking Fund Gold Bonds Due 3/1/72	94	$4,700.00	
6% Accrued Interest from 3/1 to 3/3		1.67	
			$4,701.67

*Sold

Paid Mar. 4, 1922. First Securities Company Bond Department. By (Illegible signature),

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 57.]

Debit Date 6/19/22

Wille May Woodruff

10,000 Venice Union H.S. Dist. 5—1934 @ 103.66 less 1%	10266	
10,000 Venice Union H.S. Dist.		$20651.67 Total Charge (Total must be entered above in all cases)
1—1942 @ 105.19 less 1%	10419	
Less Int. to 7/1 Dis.	33.33	

(Illegible initials) Approved:

B. M. ELLIOTT, Assistant Cashier.

The First National Bank of Los Angeles

(Perforated bank stamp)—Paid 6-20-22.

On reverse, in pencil: "Bonds".

[Willie Mae Woodruff Exhibit 57-a.]

First Securities Company

Bond Department

No. 1200

Dated 6/19/22

Received from Wille May Woodruff
Name Address

$ Twenty thousand six hundred fifty one 67/100 Dollars being payment for $ Twenty thousand ..... par value

Venice Union High School Dist 5% Bonds

10,000 due 1934 @ 102.66
@ .... and accrued interest to 6/19/22 10,000 " 1942 @ 104.19

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

BOND DEPARTMENT
FIRST SECURITIES COMPANY
By O. H. SCHOCK.

[Willie Mae Woodruff Exhibit 57-b.]

Bond Department

First Securities Company

Los Angeles, June 20, 1922

Sold To

Willie Mae Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description		Total
$10,000 pv. Venice Union High School District. Due 7/1/34	103.66 $10,366.00	
$10,000 pv. Venice Union High School District. Due 7/1/42	105.19 $10,519.00	
	$20,885.00	
Discount 5% Accrued Interest from 6/19 to 7/1	33.33	
	$20,851.67	
Less 1%	200.00	
Interim Certificate No. 2991		$20,651.67

Paid June 20, 1922. First Securities Company Bond Department. By (Illegible signature).

Received Above Described Securities—Due Bill MP

No. .....

[Willie Mae Woodruff Exhibit 57-c.]

Bond Department

First Securities Company

Los Angeles, June 20, 1922

Sold To

Willie Mae Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description	@	Total
$10,000 pv. Venice Union High School District. Due 7/1/34	103.66	$10,366.00
$10,000 pv. Venice Union High School District. Due 7/1/42	105.19	$10,519.00
		$20,885.00
Discount 5% Accrued Interest from 6/19 to 7/1		33.33
		$20,851.67
Less 1%		200.00
Interim Certificate No. 2991		$20,651.67

Received Above Described Securities—Due Bill MP

No. .....

[Willie Mae Woodruff Exhibit 58.]

The First National Bank of Los Angeles

Los Angeles, 3 3 22

Memorandum

Debit Willie May Woodruff.....$4701.67

For 5/2500 Guilder Bonds of the Kingdom of the Netherlands 50 yr. 67. S. F. Bonds due 1972 @ 940 per Bond charged as per inst. 2/3/22.

Approved:

JHS W. C. BRYAN.

On reverse: Written in pencil "$4701.67 Guilder Kingdom of Netherlands Bonds"

(Perforated bank stamp)—Paid 3-3-22.

[Willie Mae Woodruff Exhibit 58-a.]

No. 914

First Securities Company

Bond Department

Dated 3/3/22

Received from Mrs. Willie May Woodruff
Name Address

$ Forty seven hundred one and 67/100.....Dollars

Being payment for 5/2500 Guilder Par Value

Bonds of the Kingdom of the Netherlands 50 yr. 6% S. F.

Bonds @ 940 and accrued interest to 3/3/22 due 1972.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
Hold Securities First Securities Company
Forward Due Bill By O. H. Shock.
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 59.]

Sell

*375
20

7500

Branch

First Securities Company
Bond Department

Number

Posted to

Security
Customer
Recap.
Salesman

Billed

Please Buy for my account and risk
Good until.....

Date 7/28/22
% No.

Cost

/B Salesman O. H. Shock

No.	Denom.	Description	Maturity	Numbers	Price	Amount	Total
		20 Shares 1st Nat Bk L.A. Beneficial Ctfs.			375 Net		

register in name of
Wille May Woodruff
Charge to her a/c with 1st Nat Bk L.A.

Payment and Delivery Instructions

.....

.....

Above Securities received
First Securities Company
By.....

Name √ Leonard Woodruff
Address . For Wille May Woodruff

.....

Telephone .....

*Figures in italics appear in handwriting on the original.

[Willie Mae Woodruff Exhibit 60—5 Checks.]

Los Angeles, 12/29/24 No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Leonard Woodruff $14,181.66
Fourteen thousand one hundred eighty-one 66/100 Dollars

WILLIE MAY WOODRUFF.

(Perforated bank stamp)—F N B L A 1-6-25.

On reverse appears the endorsement in ink of Leonard Woodruff; also the words in pencil, "I owe you this. L. W."

The First National Bank of Los Angeles [16-3]

Los Angeles, July 27th, 1925

Pay to the Order of Leonard Woodruff $18,000.00
Eighteen Thousand 00/100.....Dollars

No.—— WILLIE MAY WOODRUFF

(Perforated bank stamp)—7-27-25.

On reverse appears the endorsement in ink of Leonard Woodruff; also written in pencil the words "I owe you this. L. J. W."

Los Angeles, April 12th, 1926. No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Leonard Woodruff $5000.00
Five thousand 00/100.....Dollars

WILLIE MAY WOODRUFF.

(Perforated bank stamp)—Paid 4-13-26.

On reverse appears the endorsement in ink of Leonard Woodruff; rubber stamp endorsements of Federal Reserve Bank of Kansas City; Los Angeles Branch of Federal Reserve Bank of San Francisco; American National Bank of Ardmore, Oklahoma; New England National Bank & Trust Co.,

Kansas City, Mo. Also the words written in pencil, "I owe you this on oil well. L. J. W."

The First National Bank of Los Angeles [16-3]

Los Angeles, Nov. 12, '26

Pay to the Order of Leonard Woodruff $6000.00
Six thousand .....Dollars

No.—— WILLE MAY WOODRUFF

(Perforated bank stamp)—11-12-26.

On reverse appears the endorsement of Leonard Woodruff in ink: also written in pencil are the words, "I owe you this on oil well. L.J.W."

Los Angeles, Dec. 3, 1926. No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Jack Tomas $600.00
Six hundred 00/100.....Dollars

WILLE MAY WOODRUFF

(Perforated bank stamp)—F N B L A, 12-4-26.

On reverse—Rubber stamp endorsements, endorsement in ink of Jack Thomas; in ink "OK, R. S. (name illegible):" also written in pencil the words "for labor on my Oregon ranch. I owe W. M. W. this $600. L.J.W. 755.52."

[Willie Mae Woodruff Exhibit 61.]

The First National Bank
Of Los Angeles

Los Angeles 5/18/22

Memorandum

Debit Willie May Woodruff.....$40136.55
For 40 M N.S.A. 4th 4 4¼'s--1938 @ 99.94. Charged in acc and with int. to Mr. Shock.

Approved:
OHS L. E. JACOBUS,
Assistant Cashier.

(Perforated bank stamp)--Paid 5-19-22.

On reverse, written in pencil, appears the following: "Liberty Bond bought by W.M.W. for her 3 children and self in equal amounts. L. J. W. sold & spent the money. L.J.W." Also written in pencil the word "Bonds."

[Willie Mae Woodruff Exhibit 61-a.]

First Securities Company

Bond Department

Sold To Los Angeles, 5/19/22

Willie May Woodruff

Denomination 50 100 500 1000	Par	Issue		Price	Principal	Int.	Total	Memorandum
		First	3½ J & D					
		First	4 J & D					
		First	4¼ J & D					
		Second	4 M & N					
		Second	4¼ M & N					
		Third	4¼ M & S					
	40,000	Fourth	4¼ A & O	99 94	399 76—	160 55	40 136 55	
		Victory	4¾ J & D					
		Coupons						
		TOTAL					40,136.55	

Above Securities Received

[Willie Mae Woodruff Exhibit 61-b.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
—and—
Los Angeles Trust & Savings Bank

Los Angeles

Bond Department

First National Bank Office

May 18, 1922

Mrs. Willie May Woodruff,
262 So. Mariposa Ave.,
Los Angeles, Calif.

Dear Mrs. Woodruff:

Confirming my telephone conversation of today with Mr. Woodruff, I have sold you:

$40,000 U. S. A. Fourth 4¼% Liberty Loan Bonds of 1938 at 99.94,

and in accordance with his instructions, I am today charging your account with the First National Bank of Los Angeles $40,136.55 being payment in full for the above as per detailed statement enclosed herewith.

At your convenience, I shall be pleased to have you or Mr. Woodruff call to accept delivery of the above bonds.

Very truly yours,

First Securities Company,
By O. H. Shock.

[Willie Mae Woodruff Exhibit 62.]

Los Angeles, 4/12, 1923 No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Drake, Riley & Thomas $8984.64
Eight Thousand Eighty four and 64/100.....Dollars

48 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 4-13-23.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 62-a.]

Drake, Riley & Thomas

Established 1912
San Francisco
315 Montgomery Street
Pasadena
16 South Raymond Ave.
Santa Barbara
1018 State Street

210 West Seventh Street
Los Angeles, Cal.
Government, Municipal and Corporation Bonds
Member Los Angeles Stock Exchange
Cable Address Perdraley
Los Angeles

Sold To

Willie May Woodruff
Los Angeles, Cal.

April 12, 1923

$15,000 Pacific Gas & Electric Corp
1st & Ref. 5½'s

Price: 98 $14,700.00

Interest: J&D 1st. Accrued
4 mo. 11 da. 300.30 $15,000.30

Maturity: December 1, 1953

Nos:

Paid by credit on books of $6015.66
and check for 8984.64 from Mrs. Woodruff

[Willie Mae Woodruff Exhibit 62-b.]

a/c Mrs. Wille May Woodruff

Thes bonds belong to Wille May Woodruff

15,000 Pac. Gas & Electric

Signed LEONARD WOODRUFF.

(28)

[Willie Mae Woodruff Exhibit 63.]

The First National Bank of Los Angeles [16-3]

Los Angeles,.....192....

Pay to the Order of First National Bank $64,000.00
Sixty-Four Thousand 00/100.....Dollars

No.—— WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 3-4-22.

Mrs.Willie Mae Woodruff,Exhibit #64

BANK OF GLENDALE

GLENDALE, CALIFORNIA

DEPOSITED BY

192

PLEASE LIST EACH CHECK SEPARATELY

	DOLLARS	CENTS
GOLD		
SILVER		
CURRENCY		
CHECKS		
"		
"		
"		
"		
"		
"		
"		
"		
"		
TOTAL $		

Received the securities
as listed thereon
from Leonard Woodruff
12/13 1921
Clark Kelly & Thomas
by [illegible]
W.M. W
64

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

Mrs.Willie Mae Woodruff,Exhibit #64

$15,000 Kelly Springfield Tire Co 8% Bonds 1931 (Temporary)

~~Mark in envelope with Mrs Woodruff's name~~

Register in N/C Willie May Woodruff

~~5000~~ Canadian Northern Ry 10,000 25 year 6½s - 7/1 1946 Delivered L.W. (Temporary)

15000 French - 8s 1946 Delivered L.W.

300 Shares Sears Roebuck Delivered L.W.

[Willie Mae Woodruff Exhibit 65.]

First Securities Company

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Los Angeles

The First National Bank Office, Los Angeles

February 9, 1925

Mrs. Wille May Woodruff, 262 S. Mariposa, Los Angeles, Calif.

Dear Mrs. Woodruff: Enclosed is a statement covering the sale of your $10,000 L. A. Gas & Electric Corp. 6% bonds of 1942 and purchase of $10,000 Pacific Steamship 6½s, showing a balance due you of $655.14 which we have today credited to your checking account with the First National Bank as per duplicate deposit tag attached.

Yours very truly,

O. H. Schock

The information and statistics contained in this letter are taken from sources which we consider reliable and, while given in good faith, are not guaranteed by us.

[Willie Mae Woodruff Exhibit 65-a.]

Deposited With

The First National Bank of Los Angeles

Commercial Deposit

2/9 1925

In making this deposit and at all times in doing business with this bank the depositor specifically agrees to all of the terms and conditions printed on the reverse side hereof

Wille May Woodruff
Depositor

By Bond Agency

Please list local checks by number of drawee bank, out of town items by number or name of city.

	Dollars	Cents
Currency		
Coin		
Checks		
	16-54	655 14

Duplicate of original deposit ticket containing ..... items. $655.14. (Illegible signature), Teller.

Total

[On reverse.]

In receiving items for deposit, credit or collection, this Bank assumes no responsibility for the loss of items in transit, or for acts or omissions of any of its collecting agents, who may be the bank or party upon whom drawn, or otherwise, as this Bank may determine, and this Bank shall only be liable for the proceeds in money or solvent credits which ultimately come into its possession. Under these conditions items on this Bank or any other bank or party, previously credited, may be charged back to the depositor's account.

Whenever the pass book or statement of account of the depositor is written up by this Bank and returned with the checks and other vouchers, the depositor shall within ten days after receipt thereof make such examination of same as will satisfy the depositor of their correctness and genuineness, both as to face and endorsements, and a failure by the depositor to report in writing anything to the contrary within ten days after such receipt, shall cause said account to become an account stated, and after said ten days shall have elapsed without objection to this Bank, the depositor shall have no right to question the correctness or genuineness of the said pass book, account, vouchers or checks, or the endorsements thereon.

[Willie Mae Woodruff Exhibit 65-b.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., Feb. 7, 1925.

To Wille May Woodruff,

Address 262 So. Mariposa Ave., Los Angeles, California.

Salesman Schock

Par Value	Description and Bond Nnmbers	Date Next Coupon Attached	Price	Amount	Total
Bot. From					
$10,000 pv.	Los Angeles Gas & Electric Corp., Series "H", Gen. & Ref. Mtg., 6% Gold Bonds, Nos. M4661/70, Due 3/1/42		102¼	10,225.00	
	Accrued Int. 9/1—2/6			258.33	
					$10,483.33
Sold To					
$10,000 pv.	Pacific Steamship Company, 1st Pfd. Marine Equipment Mtg., 6½%, Serial Gold Bonds Due Bill #6466, Due 1/1/40		97.65	9,765.00	
	Accrued Int. 1/1—2/6			63.19	
					9,828.19
	Balance credited to your checking acct., First National Bank, Los Angeles				$ 655.14

EC

[Willie Mae Woodruff Exhibit 65-c.]

Duplicate Invoice
Security-First Company
Identical in Ownership With Security-First National Bank of Los Angeles

Los Angeles, Calif., Feb. 7, 1925

To Wille May Woodruff,
Address 262 So. Mariposa Ave., Los Angeles, California
Representative Schock

Par Value Or No. Shares	Description and Security Numbers	Date Next Coupon Attached	Price	Amount	Total
Bot. From					
$10,000 pv.	Los Angeles Gas & Electric Corp., Series "H", Gen. & Ref. Mtg., 6% Gold Bonds, Nos. M4661/70, Due 3/1/42		102¼	10,225.00	
	Accrued Int. 9/1—2/6			258.33	
					$10,483.33
Sold To					
$10,000 pv.	Pacific Steamship Company, 1st Pfd. Marine Equipment Mtg., 6½%, Serial Gold Bonds Due Bill #6466, Due 1/1/40		97.65	9,765.00	
	Accrued Int. 1/1—2/6			63.19	
					9,828.19
	Balance credited to your checking acct., First National Bank, Los Angeles				$ 655.14

EC

[Willie Mae Woodruff Exhibit 65-d.]

Securities Company

Identical in Ownership With

ational
s Angeles

Pacific-Southwest
Trust & Savings Bank

March 16, 1925.

Mrs. Wille May Woodruff, 262 S. Mariposa, Los Angeles, Cal.

*10°

Dear Madam: We are advised that the permanent

Pacific Steamship Company 6½s due serially

are ready for delivery.

If you will deposit your temporary certificates for the above with us, we will be pleased to forward them for exchange and deliver to you the permanent securities when received by us.

Yours very truly,

O. H. Schock

**10 000 Pacific Steamship Co Bond in reorganization of new Co these bonds were sold to the new co for $25 00 Darnell was to place this money to bolster up a short stock account. He put it in his pocket iastead & caused the selling of 12 000 shares of New York stock at a very low price—*

I owe W.M.W. this $25 00 in cash & untold amount of considerable more for at least half of the lost on these stocks. app $20 a share or on 600 shares $12 000 in all. L.J.W.

*Words and figures in italics appear in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 66.]

First Securities Company

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Los Angeles

The First National Bank Office, Los Angeles

February 5, 1925

Mr. Leonard Woodruff,
262 S, Mariposa,
Los Angeles, Calif.

Dear Mr. Woodruff:

Attached hereto is my receipt No. 4065 showing $5161.94 received from Wille May Woodruff for $5000 Pacific Dock & Terminal, First 6½s of 1929.

There is also attached duplicate deposit tag for $300 which represents matured coupons of September 1, 1924 which were attached to the $10,000 L. A. Gas & Electric 6s of 1942 which I took today in payment for $10,000 Pacific Steamship 6½s of 1940.

Yours very truly,

O. H. SCHOCK

The information and statistics contained in this letter are taken from sources which we consider reliable and, while given in good faith, are not guaranteed by us.

[Willie Mae Woodruff Exhibit 66-a.]

First Securities Company. No. 4065

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Bond Department

Dated 2/5/25

Received from Willie May Woodruff
Name Address

$ Fifty one hundred sixty-one 94/100.....Dollars
being payment for Five thousand.....par value

Pac Dock & Term Co. 1st Mtg. 6½ due 1929 at 101 and accrued interest to 2/5/25.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Prin.	5050
Int.	111.94
	5151.94

Bond Department
First Securities Company
By O. H. Schock.

Hold Securities

Forward Due Bill

Forward Securities R/M Insured

[Willie Mae Woodruff Exhibit 66-b.]

First Securities Company

Bond Department

Branch Date Ordered 2/5/25

Name Wille May Woodruff

Address 262 So. Mariposa Ave.

Telephone

Good Until Salesman O. H. Schock

Purchase Order Number
Regular or Market
Set Up Price
Entered
Sales Dept. Record
Billed by Date
Entered
Security Ledger
Sales
Recap.
Accounts Receivable
Security Ledger No.
Cost

Quan. Denom.	Description	Mat.	Numbers	Price	Amount	Total
10/1060	L. A. Gas & Elec Co	42	4661/70			

Payment and Delivery Instructions
Trade for Pac Steamship Co. 6½
Above securities received by: O. H. Schock

Please Sell the Above Securities for My Account and Risk
Client's Signature

[Willie Mae Woodruff Exhibit 66-c.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
——and the——
Los Angeles Trust & Savings Bank

Bond Department

Los Angeles
April 7, 1925

Mr. Leonard Woodruff,
262 S. Mariposa,
Los Angeles, Calif.

Dear Sir:

At your convenience kindly call and take delivery of the permanent

Pacific Steamship Co. 6½, 1940

exchanged for your temporary certificates recently deposited with us.

Kindly bring our receipt for surrender.

Yours very truly,

O. H. SCHOCK

[Willie Mae Woodruff Exhibit 67.]

The First National Bank of Los Angeles [16-3]

Los Angeles, 2/28/24

Pay to the Order of First National Bank, L.A. $18,000.00
Eighteen Thousand and no/100.....Dollars

No. 51 WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 3-1-24

[Willie Mae Woodruff Exhibit 68.]

The First National Bank of Los Angeles [16-3]

Los Angeles 11/26 24

Pay to the Order of First National Bank $9415.66
Ninety four hundred fifteen 66/100 Dollars

No. 44 WILLE MAY WOOODRUFF

(Perforated bank stamp)—FNB LA 11-29-24.

On reverse—written in pencil is the following: "Think this is Sears & Roebuck purchase."

[Willie Mae Woodruff Exhibit 69.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 13th, 1924

Pay to the Order of Drake, Riley & Thomas $8,970.00
Eighty nine hundred and seventy 00/100 Dollars

No. 43 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 5-13-24.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas. Also the following written in pencil: "Probably 100 shares Sears Roe—purchase—"

[Willie Mae Woodruff Exhibit 69-a.]

Drake, Riley & Thomas

Established 1912
Pasadena
14 North Euclid Ave.
Santa Barbara
1018 State Street
Long Beach
141 West First Street
Riverside
660 Seventh Street

210 West Seventh St.
I. N. Van Nuys Bldg.
Los Angeles, Cal.

Government, Municipal and Corporation Bonds
Members San Francisco Stock Exchange
Members Los Angeles Stock Exchange
Cable Address
Perdraley
Los Angeles

Sold To
Mrs. Willie May Woodruff,
Los Angeles, California.

May 13, 1924.

100 shs. Southern Calif. Edison Co. 6% Pfd. Stock		
Price: 90	$9000.00	
Interest: Dated June 1st less 18 da. Prepy.	30.00	
		$8970.00

Paid May 13, 1924—Drake, Riley & Thomas, Los Angeles, Cal., by JHD.

[Willie Mae Woodruff Exhibit 70.]

Los Angeles, Cal., 4 9 23 No.

The First National Bank of Los Angeles (16-3)

Pay to the Order of First Security Co. $19,888
Nineteen thousand eight hundred eighty # Dollars

45 Willie May Woodruff

(Perforated bank stamp)—Paid 4-11-23.

On reverse:

Rubber stamp endorsement, First Securities Co.

Rubber stamp endorsement, Los Angeles Clearing House and Savings Bank.

*19880
1988
17892

*Appears in handwriting in pencil on reverse of original.

[Willie Mae Woodruff Exhibit 70-a.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., 4-19-23

Date Sold.....
Salesman Schock
Date Delivered.....

To Willie May Woodruff,
Address 262 So. Mariposa,
Los Angeles, Calif.

Par Value	Description and Bond Numbers	Date Last Coupon Attached	Price	Amount	Total
Sold To					
$20,000	pw. Union Oil of California Serial 6% Gold Bond Series B, Due Bill 4221, Due 4/1/26		99¼	19,850.00	
	Accrued Int. 3/1-4/10			30.00	
					$19,880.00

Paid Apr. 19, 1923. First Securities Company Bond Department. By FORNE.

[Willie Mae Woodruff Exhibit 71.]

Los Angeles, June 7-23 No.....

The First National Bank of Los Angeles [16-3]

Pay to the Order of First Securities Co $15500.00
Fifteen thousand five hundred Dollars

47 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-26-23.

On reverse:

Rubber stamp endorsement, First Securities Co.

Rubber stamp endorsement, Los Angeles Clearing House and Savings Bank.

[Willie Mae Woodruff Exhibit 71-a.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., 6-25-23

Date Sold.....
Salesman Schock
Date Delivered.....

To Willie May Woodruff,
Address 262 So. Mariposa,
Los Angeles, Calif.

Par Value	Description and Bond Numbers	Date Last Coupon Attached	Price	Amount	Total
Sold To Paid					$15,500.00
$15,000 pv.	City of L. A. Water Works, 4½%, No. M10230/44, Due 12/1/29	12/1/23	100¼	15,037.50	
	Accrued Int. 6/1-6/25			45.00	
					$15,082.50
	Balance Due You. Credit, your Account First National Bank.				$ 417.50

*(Illegible) OK JD

V

*Appear in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 72.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 16th, 1922

Pay to the Order of Drake, Riley & Thomas $17,500.00
Seventeen Thousand Five Hundred 00/100.....Dollars

No.——

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-16-22.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas. Also written in pencil was the following: "Rep. France bond bought by W.M.W. sold & spent by L.J.W."

[Willie Mae Woodruff Exhibit 72-a.]

Drake, Riley & Thomas

Statement of Account

Leonard Woodruff,
~~1621 South Figueroa~~
7

Mar 27 1923

Date		Dr.	Credit
1922			
June 16	Cash		17,500.00
15	300 sh Cuban Amer Sugar	7,155.00	
July 7	(6/13) 5 M San J Lt. & Pr. 6/50	5047.50	
7	(6/13) 5 M Union Oil of Calif. 5/31	4861.80	
7	5 M S J Lt & Pr. 6/50		5080.00
7	5 M Union Oil of Calif. 5/31		4753.47
7	6/13 5 M Crane Creek 8 0 6/32	5041.00	
7	" 5 " Sunnyside sp	5041.00	
24	Union Oil Cpns.		125.00
1923			
Mar. 15	400 sh. Cuban Amer. Sugar		14,122.50
15	Stamps " "	1.60	
17	200 sh. General Motors		2955.00
17	Stamps " "	.8	
19	100 sh. Cuban Amer. Sugar		3515.00
19	Stamp " " "	.40	
		27,156.30	48,050.97
			27,156.30
	Cr. Balance		20,894.67

[Willie Mae Woodruff Exhibit 72-b.]

Leonard Woodruff

Regular Account

1922		Dr.	Credit
June 15	Cuban-American Sugar	7,155.00	
6	Cash		17,500.00
7	5M Crane Creek (Idaho) 6s	5,041.00	
7	" Sunnyside (Idaho) 6s	5,041.00	
7	Profit on 5M San Joaquin 6s		32.50
7	" " " Union Oil 5s		17.47
7	To balance	312.97	
		17,549.97	17,549.97
7	Bal. to Credit Mr. Woodruff		312.97

[Willie Mae Woodruff Exhibit 73.]

First National Bank

Los Angeles, Cal.

Los Angeles, Cal., 9 29/21

Memorandum

Debit Willie May Woodruff.....$10,197.87
For 10M L. A. City Patrol Dist. 5½% Bonds 5M due 11/1/22 5M due 11/1/23 in accordance with your inst. & as per our letter of 9/28/21.

W. T. S. Hammond, Cashier
By A. C. Nay, Junior Vice-Pres.

53
OHS.

(Perforated bank stamp)—9-29-21.

On reverse—Written in pencil was the following: "L. A. City Schools Exempt from Taxes. L.W. F. Securities Co. or First Natl. Bk."

[Willie Mae Woodruff Exhibit 74.]

Los Angeles 12/27/24 No.

The First National Bank of Los Angeles (16-3)

Pay to the Order of First Nat. Bk., L.A. .. $4871.67
Forty-eight hundred seventy-one 67/100.....Dollars

x WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 12-29-24.

On reverse in pencil "Bonds bought in 1924."

[Willie Mae Woodruff Exhibit 74-a.]

First Securities Company No. 4237

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank
Bond Department

Dated 12/27/24

Received from Wille May Woodruff
Name Address

$ Forty-eight hundred seventy-one 67/100.....Dollars
being payment for $ Five thousand.....par value
Central Ariz. L. & P. 6, 1942 at 98 and accrued interest to 12/27/24.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured

Prin.	4850	
Int.	21.67	Bond Department
		First Securities Company
	4871.61	By O. H. SCHOCK

[Willie Mae Woodruff Exhibit 75]

Los Angeles 11/7.24. No. .....

The First National Bank of Los Angeles [16-3]

Pay to the Order of First National Bank of
Los Angeles $5000.00
Five Thousand no/100 ..... Dollars

WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 11-7-24.

On reverse—Written in pencil is the following: "Payment on First Nat. Bank stock."

[Willie May Woodruff Exhibit 76.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 8th, 1924

Pay to the Order of First Security $10,326.40
Ten Thousand and Three Hundred Twenty-six 40/100 Dollars

No. 46 WILLE MAY WOODRUFF

On reverse—Rubber stamp endorsement, First Securities Company.

[Willie Mae Woodruff Exhibit 77.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 20th, 1920

Pay to the Order of Drake, Riley & Thomas $14552.61
Fourteen Thousand Five Hundred and Fifty Two
61/100 ..... Dollars

No. 41 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-21-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 78.]

Debit Date Mch 5, 1923

Willie May Woodruff

For investment $26,500.00

Total Charge
(Total Must Be Entered Above in All Cases)

The First National Bank of Los Angeles

Approved:

L. E. JACOBUS
Asst, Cashier.

(Perforated bank stamp)—Paid 3-5-23.

[Willie Mae Woodruff Exhibit 78-a.]

First Securities Company No. 4238

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank
Bond Department

Dated 12/29/24

Received from Wille May Woodruff
Name Address

$ *Forteen* thousand one hundred eighty-one 66/100....Dollars being payment for $ Fifteen thousand.....par value Gov. of the French Rep. 77 Extended Bonds at 94 and accrued interest to 12/29/24

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
First Securities Company
By O. H. SCHOCK

Hold Securities
Forward Due Bill
Forward Securities R/M Insured

[Willie Mae Woodruff Exhibit 78-b.]

Debit

Date Feby. 26, 1925

Wille May Woodruff

For investment according to instructions. $15,000.00

Total Charge
(Total Must Be Entered Above in All Cases)

The First National Bank of Los Angeles

Approved:
L. E. JACOBUS
ac
Assistant Cashier.

(Perforated bank stamp)—Paid 2-26-25.

Mrs. Willie Mae Woodruff, Exhibit #79

TAX RATES ON EACH $100 VALUATION AS

COUNTY (INSTITUTIONS & CHARITY)	.57
(RETURN OF SCHOOL INTEREST)	.06
(OTHER SERVICES)	.64 1.27
LOS ANGELES CITY TAX DIST. # 3	1.56
LOS ANGELES CITY SCHOOL	1.31
METROPOLITAN WATER DIST.	.37
COUNTY FLOOD (ON LAND & IMPS)	.29

OFFICE OF H. L. BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1936 to June 30, 1937.

1936

AND FOR THE MUNICIPAL TAXES OF LOS ANGELES CITY

No 152976 Vol. 28

No 152976 Vol. 28

ASSESSED TO OR OWNED BY

LEONARD J WOODRUFF
C/O C & J BERQUIST
500 HALL OF RECORDS

LOS ANGELES CAL

SECOND INSTALLMENT DUE JANUARY 30, 1937 RECEIPT HERE

FIRST INSTALLMENT DUE NOVEMBER 1, 1936 RECEIPT HERE

PAID
DEC 5 1'36
H. L. BYRAM, Co. Tax Collector

LINES

SOLD FOR TAXES 6-30-34

WRITE THIS OFFICE FOR INFORMATION

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH ITEM UNPAID APRIL 30, 1937.

DELINQUENT PENALTY OF 5% ADDED IF UNPAID DEC. 2, 1936 AND 5% ADDED IF UNPAID APRIL 30, 1937.

CLERK

CORR.

BILLED ON THE ASSESSMENT ROLL as per Lib. 22 P. 5648 of Maps Records of L. A. Co.

LOT	BLK.			REAL ESTATE	IMPROVEMENTS	EXEMPTIONS	NET VAL AFTER EXEMPTIONS	TOTAL TAX ITEMS	
53				6400	10090		16490	791	52

	FIRST INSTALLMENT		SECOND INSTALLMENT	
	395	76	395	76
5% PEN.			5% PEN.	
COSTS			COSTS	
TOTAL 1ST		INST.	TOTAL 2ND	INST.

2ND INST.		
TAX	395	76
5% PEN.		
COSTS		
TOTAL		

1936-37

NOTICE OF DELINQUENCY
AUGUST 15th ITEM A STREET IMPROVEMENT BOND CHARGEABLE AGAINST THIS PROPERTY. PAYMENT ON UNPAID INSTALLMENTS MUST BE PAID TO N. T. PUCELL, TREASURER OF THE CITY OF LOS ANGELES, ROOM 12 CITY HALL. PENALTIES ADDED TO AMOUNTS UNPAID.

NOTICE OF ASSESSMENT
THERE IS A CASH ASSESSMENT LIEN ON THIS PROPERTY WHICH SHOULD BE PAID AT ONCE. SEE BUREAU OF ASSESSMENTS, ROOM 11, CITY HALL, LOS ANGELES, TO AVOID FORECLOSURE.

TO ENSURE NOTIFICATION OF IMPROVEMENT LIENS, RECORD ADDRESS & LEGAL DESCRIPTION WITH CITY CLERK, ROOM 360, CITY HALL, LOS ANGELES.

TOTAL PAYMENT RECEIPTED HERE

1936

IF PAYMENT IS MADE BY MAIL, PLEASE ENCLOSE A SELF ADDRESSED STAMPED ENVELOPE FOR RETURN OF RECEIPT.

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

PAYMENTS MADE AFTER JUNE 30, 1937 REQUIRE ADDITIONAL PENALTIES OF 1% PER MONTH

DO NOT DETACH

307

Mrs. Willie Mae Woodruff, Exhibit 80

Form 7-3-D—10684

COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

NO. 8122

Receipt for Conditional Payment on Account of Delinquent Taxes

When properly stamped by the County Tax Collector this becomes a receipt under Section 3817c, 3217c2, or 3817c3, of the Political Code, as indicated below, for a payment which may be applied on redemption of the within described property which was sold to the State on the ..... day of ....., 19 ....., for the delinquent taxes of 19 .....

ASSESSED TO Gulbar

DESCRIPTION OF REAL ESTATE

TRACT Hillhurst Park Tr

TAX OF	ASSESSMENT	VOL.	PAGE	AMOUNT
19				
19				
19				
19				
19				
19				
19				
19				
19				
19				

TOTAL DELINQUENT TAXES		291.66
PREVIOUS PAYMENTS	1st 291.66	583.32
BALANCE UNPAID		233.33
ACCOUNT NUMBER	55668	
INTEREST ITEM	C-4 10.	233.33
THIS INSTALLMENT OF TAX		291.66
TOTAL PAYMENT		524.99

SEC	TWP.	R	W
LOT	BLOCK	MAP	M. R.
53		22/34	

I, H. L. BYRAM, County Tax Collector, in and for said County, State aforesaid, do hereby certify that the foregoing statement contains a full and correct estimate of the amount of unpaid taxes as shown by the delinquent rolls in my office, and that the payment shown hereon is in accordance with the provisions of Section 3817c of the Political Code.

H. L. BYRAM, County Tax Collector.

12/5, 1936 By Edward [illegible], Deputy

Office of the County Tax Collector, County of Los Angeles

Received of Georgia Woodruff

Address 2446 Twenty Five

PAID
DEC 5 '36
B
H. L. BYRAM Co. Tax Collector

THE AMOUNT as shown above, in lawful money of the United States, which may be applied on redemption of the within described real estate, in accordance with the provisions of the section of the Political Code as shown in the above certificate

H. L. BYRAM, County Tax Collector.

..... 193 ..... NO. ..... By ....., Deputy

[Transcript of Proceedings, July 27, 1942.]

459 Appearances: W. W. Potter, Attorney for Willie Mae Woodruff, et al; Champion & Fischl, Attorneys for Leonard J. Woodruff; T. G. Gibson, Ardmore, Oklahoma, and Rupert B. Turnbull, of California, Attorneys for M. E. Heiser.

Before Hon. Geo. Clark, Referee in Bankruptcy. (Hearing held July 27, 1942, Ardmore, Oklahoma, as to claim of M. E. Heiser.)

460 On this the 27th day of July, 1942, the above cause came on for hearing before the Hon. Geo. F. Clark, Referee, at Ardmore, Oklahoma, W. W. Potter of Ardmore, Oklahoma, appearing for and on behalf of Willie Mae Woodruff and children, Champion & Fischl, of Ardmore, Oklahoma, appearing for and on behalf of Leonard J. Woodruff, and Rupert D. Turnbull of Los Angeles, California, and T. G. Gibson of Ardmore, Oklahoma, appearing for and on behalf of M. E. Heiser. Whereupon all parties announced ready, and the proceedings in the matter of the objection to the claim of M. E. Heiser appear as follows:

By Mr. Fischl: If the Court please we offer in evidence Objectors Exhibit A-A, being a certified copy of the Clerk's minutes in the case of M. E. Heiser vs Leonard Woodruff, et al, No. 7256-C Law on the motion of Walter Calvin Smith to dismiss in the law case. This is the last sheet in this instrument.

By Mr. Turnbull: Only the minutes, or the last sheet?

By Mr. Fischl: Yes, sir.

By Mr. Turnbull: May we take the balance out of the exhibit?

By Mr. Fischl: That is unnecessary, as I may want to use it.

461 By the Court: Very well, let it be admitted in evidence.

By Mr. Fischl: We offer in evidence the deposition of H. A. Dewing and C. W. McClain taken on the 8th day of July, 1942, in this matter, being a part of that deposition, for the purpose of showing the extent of the inquiry upon the hearing before Judge Cosgrave, as our Exhibit BB, together with the exhibits, if any, identified by the witnesses. The transcript of the exhibits, or whatever it is that is identified in the deposition. It is stipulated and agreed that the reading of any and all depositions at this time is waived by all parties with the understanding that the Court may read the same at his convenience with the same force and effect as *it* read upon the trial of this case.

By Mr. Turnbull: We so stipulate, and the depositions when introduced may be read by the Court at any time with the understanding that the judgment creditor M. E. Heiser objects to the introduction of any evidence, other than the record evidence, with respect to the judgment in the case of M. E. Heiser vs Leonard Woodruff, No. 7256 C-Law on the ground that it is immaterial and incompetent to the issue, or any issue which can be or could or should have been legally raised; that the subject matter of the proceedings taken before the Court is res adjudicata, and the objectors are estopped by the judgment on the ground
462 of fraud, and the objectors are bound by the rule of full faith and credit which must be given to the judgment of the District Court of the United States for the Southern District of California. We stipulate that the Court may read the depositions at any time subject to that objection and the Court's ruling thereon.

By Mr. Fischl: I am thinking what the effect might be if the objection should be sustained.

By Mr. Turnbull: There is no objection. I don't believe except the objection just made.

By Mr. Fischl: With the understanding that in the event the Court sustains an objection to some evidence that is material because of the form in which it is offered then we will be given an opportunity to correct it, and if the Court

feels that the evidence is not properly proven we want our objection.

By the Court: I don't believe that would be practicable. You had better go ahead and read them, or the part you desire to offer here. I don't care to leave it open that way.

By Mr. Turnbull: Let me make my general objection to all the deposition and you can pass on my objection now and let it go to the whole deposition, other than certified copies of the records you introduce here, and the record of June,

I believe it is, before Judge Cosgraves in the case of

463 M. E. Heiser vs Leonard Woodruff, No. 7256-C-Law,

other than those our objection is that the deposition is incompetent, irrelevant and immaterial to prove any legal objection of these objectors, as shown in my objection heretofore made in this record.

By the Court: Let the objection be overruled.

By Mr. Turnbull: I will stipulate that the depositions may be tendered as part of their proof in this case, and the same objection is made to all and every part of the deposition, and the same may be read by the Court at any time.

By the Court: Very well.

By Mr. Fischl, of Counsel for Heirs of Leonard Woodruff: We offer in evidence the deposition of Francis B. Cobb in so far as it pertains to the proceedings had in the District Court of the United States for the Southern District of California in the case of M. E. Heiser vs. Leonard Woodruff on the motion of the Trustee to vacate the judgment.

By Mr. Turnbull: I take it if Counsel wants to use it he may use it, but I don't believe he can take out what he don't want to use.

By Mr. Fischl: The rule is we can use any part of the deposition we *deisre*. This part deals with reference to the question of res adjudicata but all of this deposition does not deal with that question on the Trustee hearing to vacate the judgment. I assume, however the entire deposition may be considered in evidence now.

464 By Mr. Turnbull: The record does not show that portion of the deposition is being read. I made an agreement with counsel as to that, but now I object for the reason this is not any legal way to offer testimony. We do not know what he has offered, or what portion the Court is expected to read.

By Mr. Fischl: Part of this deposition deals with one question only.

By Mr. Turnbull: I do not believe any part of it is admissable. I think it is a collateral attack upon this judgment.

By Mr. Fischl: On page 33 going down to next to the last line on page 39 is the part we are offering. The balance of the deposition deals with another subject entirely.

By the Court: I presume the entire deposition will be offered.

By Mr. Fischl: At the proper time, yes, sir, your Honor.

By the Court: I do not see why it should go in that way.

By Mr. Fischl: Let it all go in then, your Honor.

By Mr. Turnbull: We make the same objection, your Honor, it is a collateral attack upon a valid and binding judgment. It would be incompetent, irrelevant and immaterial to any issue which legally can be raised here.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By the Court: Your objection goes to the deposition as a whole on account, as you say, it is a collateral attack
465 upon a judgment.

By Mr. Turnbull: Yes, sir, and it is not proper evidence on any issue that could be raised here.

By Mr. Fischl, of Counsel for certain Creditors: If the Court please we offer in evidence as our Exhibit CC Reporter's Transcript of arguments on motion to vacate judgment and set aside default in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, No. 7256 C-Law, together with

Reporter's Transcript of rulings and remarks of the Court attached thereto, being Objectors Exhibit 1 to deposition of H. A. Dewing. We offer in evidence as our Exhibit DD certified copy of transcript of record in the United States Circuit Court of Appeals for the Ninth Circuit, styled P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants vs M. E. Heiser, Appellee, No. 9356.

As our Exhibit EE we offer in evidence a certified copy of Appellants' Opening Brief in the same case; and as our Exhibit FF we offer in evidence a certified copy of Appellee's brief in that case, and as Exhibit GG we offer in evidence a certified copy of Appellants' Closing brief in that same case.

By Mr. Turnbull: To each of these exhibits we object on the ground that it is a collateral attack upon a
466 final and binding judgment and is not legal evidence which can be raised as against any final judgment, and is an attempt to have this Court reverse the Circuit Court of Appeals for the Ninth Circuit in which the judgment was affirmed, or rendered.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

LEONARD WOODRUFF called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. Your name is Leonard Woodruff?
A. Yes, sir.
Q. You are the debtor in this proceeding?
A. Yes, sir.
Q. How old are you, Mr. Woodruff?
A. Fifty-five.
Q. Are you a man of family?
A. Yes, sir.
Q. Of whom does your family consist?

A. My wife and three children.
Q. Where were you born?
A. I was born in Page County, Iowa?
A. Of what State are you a resident now?
A. Oklahoma.
467 Q. Since what time, please sir?
A. Since 1912.
Q. Did you ever live in California Mr. Woodruff, were you ever out there?
A. Yes, I have been in a great many States.
Q. What has been the extent of your being in California?
A. I was there over a partial period of years for my health.
Q. Beginning with what year would you say?
A. 1920.
Q. What has been your business the last twenty-five years, Mr. Woodruff?
A. Ranching and oil.
Q. Have you ever, either as a manufacturer or as a broker dealt in gems or antiques or jewelry or anything of that kind?
A. No, I have not, occasionally I have handled a few pieces of jewelry through a Jew store which I considered a benefactor.
Q. That is in your antique store and is a part of the estate?
A. Yes, sir.
Q. Did you ever make any study of mineralogy?
A. Not technically.
Q. What experience have you had with jewelry, gems or mineralogy in general?

By Mr. Turnbull: We object to that on the ground it is incompetent, irrelevant and immaterial and which cannot be legally raised, it cannot be raised by the debtor here, and it is incompetent, irrelevant and immaterial and it is res judicata and is an attack upon a final judgment of
468 the District Court of the United States for the Southern District of California.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Go ahead.

A. As a collector over a period of years and through my intercourse and conversation with dealers I have acquired some knowledge.

Q. To what extent have you dealt with gems during the last twenty-five years?

A. Outside of an old piece of antique, I was a private collector.

Q. Do you know Calvin Smith?

A. Yes, sir.

Q. Where does he live?

A. Los Angeles, California.

Q. How long have you known him?

A. Since 1921 or 1922.

Q. What business is he in?

A. Semi-precious stone cutter and wholesaler.

Q. Did you ever have any business relations with him?

A. In purchasing various different kinds of stones for my collection. I took rocks there and had them ground.

Q. Have you ever had any financial business dealings with him?

A. Not only loaned him some money, that was all.

Q. What business was he connected with?

469 A. The Golden State Gem Company of California.

Q. You have any interest in that Company?

A. No, sir.

Q. Or any stock?

A. No, sir.

Q. Any interest in anywise as a stockholder or otherwise?

A. No, sir.

Q. Did you ever receive any property from it?

A. No, sir.

Q. Do you know M. E. Heiser?

A. Yes, sir.

Q. When did you get acquainted with him?

A. I believe it was 1928.

Q. What was the circumstances under which you got acquainted with him?

A. I am not certain as to that.

Q. What is your best recollection?

A. I met a man down in the Golden State Gem Company office that was in a similar business, I met fifty or a hundred men in there, I am not positive.

Q. You think you met him there?

A. I may have, it seems to me the first time I met him was up at my antique store.

Q. Did you ever buy anything from him?

A. Yes, I bought approximately $2,000.00 worth of black Australian uncut opals.

Q. About when was that, Mr. Woodruff?

A. The first of 1928, I believe, it was, I believe it was the last of April or the first of May.

Q. Did you go to see Mr. Heiser or did he come
470 to see you?

A. He came to the store and displayed them on a table, and in that purchase also there was some black opals that were polluted with slate and stuck together with cement, they were cut.

Q. When was the next time you saw him, if you recall?

A. Well, I saw him quite frequently, as much as five times a week or six, not every week maybe but for several weeks.

Q. Where did you see him?

A. I saw him at the store and my house most of the time.

Q. Did you send for him?

A. No, sir, I did not,

Q. Did you ever send for him on any occasion?

A. No, sir.

Q. How many times would you say you saw M. E. Heiser at your office or your home from the time you bought these gems and the 17th of August of 1928?

A. That would be more or less of a guess, between twenty-five and fifty times, maybe thirty-five or forty times anyway.

Q. On any occasion did you ever send for him?

A. No, sir.

Q. When he came back to you, after you bought the gems from him, what was the purpose of his visiting you when he came back to see you?

By Mr. Turnbull: We object at this time to the testimony of the witness as it is an attempt to collaterally attack the judgment and it is incompetent to prove any issue that can be raised or could be legally raised by this debtor.

471 By the Court: Overruled.

By Mr. Turnbull: Exception. May it be considered that this is a general objection to all this testimony.

By Mr. Fischl: We agree to that, if the Court please.

A. That I would not know except on one occasion he sold me three small cut white sapphires and on another occasion he sold me a very large Australian black opal.

Q. Did you have any conversation about that?

A. Yes.

Q. When did that conversation start?

A. In July I think.

Q. Who started it?

A. Heiser.

Q. Where was it started, your best recollection?

A. It was first mentioned in my home and the second mention was at the office.

Q. At that time did you know anything about Heiser's mining property?

A. Only what he had said.

Q. How many times would you say this mining venture was discussed between you?

A. Every day that he could get in the house or the store.

Q. Did you send for him to engage in those conversations?

A. No, sir, I did not.

Q. Would you give the Court a brief general outline of the discussions?

A. Calvin Smith, if I remember correctly, always brought him up to the house or the store. His home was in Frisco and Smith always brought him up in a car.

472 Q. Smith would come with him on every occasion?

A. I don't think there was an exception to that.

Q. And what was the conversation with reference to the mining venture?

A. It was a new organization he had talked over with Smith and he claimed to have, among other things, some valuable sapphire mine in Australia and had one small shovel that needed repair and wanted to buy another one and it seems the gravel was taken out some twenty to thirty feet deep and had to be pulled up in shovels and be seined and cleaned by some kind of a movement that would eliminate the gravel.

Q. Were they trying to interest you in that proposition?

A. It was naturally a proposition between Heiser and Smith and the fact our mines were brought in, I did not pay any attention to it, to put the cutting establishment in and Heiser was to put in the stock of this Burmah Sapphires Limited, this Company in Australia.

Q. Of the Heiser Burmah Sapphires Limited of Australia?

A. Yes, sir.

Q. Why were they talking to you about it?

A. Heiser found out I had loaned Smith some money in the past and they were not able to handle this deal they wanted to put over.

Q. They want you to put up some money?

A. Yes, sir.

Q. How much did Smith owe you at the time?

A. Well, the amount was indefinite, I thought it was around $60,000.00, it was a lot and it could not be proven. The amount proven was $33,000.00 and twelve or thirteen thousand dollars was questionable and the other
473 amount was lost or misplaced.

Q. You were able to prove $33,000.00 at that time?

A. Yes, sir, and very good evidence of twelve or thirteen thousand more.

Q. Was that money that you had loaned him to open his business on, the Golden State Gem Company?

A. To run his business and buy raw materials and so forth.

By Mr. Turnbull: We make the further objection, if the Court please, for the reason the witness has not cleared up just who he is talking about.

By Mr. Fischl: We are talking about Calvin Smith all the way through.

By Mr. Turnbull: All right.

By Mr. Fischl:

Q. What agreement did you make at that time with Calvin Smith or M. E. Heiser?

A. I promised them that I would loan them $10,000.00 to start to finance the Golden State Gem Company of Nevada.

Q. Did you make them that loan?

A. Yes, sir.

Q. To whom did you make the loan?

A. To W. Calvin Smith.

Q. When did you make that loan, if you remember?

A. Well it was between the 13th and 17th of August, 1928.

Q. Did you have any security for the money that he owed you up to that time?

A. I had a mortgage for $18,000.00.

Q. On what?

A. His machinery and place of business and equipment and stock.

474 Q. Did you have any other security or supposed to have any other security?

A. Yes, sir, I was supposed to but I never got around to it.

Q. What were you supposed to have?

A. Either a second mortgage or increase the first mortgage to around $50,000.00.

Q. Did you have any gems hypothecated?

By Mr. Turnbull: We object to that as incompetent, irrelevant and immaterial and it is a collateral attack upon a matter that has been adjudicated, a valid and subsisting judgment of the District Court of the United States of the Southern District of California.

By the Court: Overruled.

By Mr. Turnbull: Exception.

A. Calvin Smith came up to me once about three weeks

before Christmas, and the jewelry business is like any other business then, it is five to ten times larger—

Q. Were you supposed to have security on any other stuff?

By Mr. Turnbull: We object to that, he has interrupted the witness when he was trying to answer and the testimony would be a collateral attack upon a valid judgment anyway, but I insist that the witness be permitted to answer.

By the Court: Go ahead.

A. He came to me and said he needed some extra money and he brought up a quantity of stuff and I put it in the old First National Bank box and I was leaving shortly and in two or three days he came up and got part of it
475 and the balance stayed there and has been there several years, and at this late date I don't know what became of it. It was considered by Smith to be valuable and by me at the time to be worth maybe five or six thousand dollars.

Q. Who had access to it after it was put in the bank?

By Mr. Turnbull: We object to that as it would be calling for a conclusion of the witness and there was a written record of it which counsel made the subject matter of his deposition here. There was a receipt given for that property and this is some fourteen years later counsel asks this witness for his opinion.

By the Court: Sustain the objection.

By Mr. Fischl:

Q. Did you make any agreement with Mr. Smith or Mr Heiser or either of them with reference to this mining venture?

A. You mean after the loan of $10,000.00?

Q. You have not told about the loan of $10,000.00 yet.

You did say you loaned him $10,000.00.

By Mr. Turnbull: We object to that the record doesn't show what he says.

By Mr. Fischl:

Q. Mr. Woodruff, was the agreement for this loan in writing, this $10,000.00 loan?

A. I believe it was, if it was my attorney kept it for a while and lost it, I don't have it.

Q. Do you have a copy of the agreement now?

A. I am not certain that there was a written agreement.

Q. To whom did you loan the money?

476 A. To Calvin Smith.

Q. What was the agreement you had with him when you loaned him the money?

A. That they would reorganize this new corporation and then I had went as collateral or security on a note and I required he pay some of that. I think they had already gone and demanded payment, as I remember now, and I required him to pay enough to release that, which he did.

Q. Who was that note to?

A. J. E. Bene.

Q. Mr. Woodruff, in the discussion you had between you and Heiser and Smith was anything said about Heiser as to what he was to do in reference to the new corporation?

A. Yes, he was the one that took care of the corporation, I was not interested much in that but Smith was not qualified for that and Heiser hired Barsdale to look after that.

Q. Who told you that, Mr. Woodruff?

A. I found it out.

Q. Mr. Heiser or Mr. Smith in their conversation with you tell you that?

A. It seems to me I found it out eight or nine months later.

Q. We are talking about what happened between you and Heiser and Smith.

A. They told me they would organize a new corporation, I think it started with four million dollars and ended with five million.

Q. Were you in the company?

A. No, sir.

Q. Were you to have stock in it?

477 A. No, sir.

Q. What was Heiser to put in the corporation?

A. He was to put the Heiser Burmah Sapphire mines and some American mines.

Q. Were any stones or gems or sapphires or anything of that kind to be put in?

A. Two tons of sapphires were up at San Francisco and Heiser offered to ship them down there as collateral for the $10,000.00 loan.

Q. Who said that?

A. Heiser did.

Q. What did he say about it?

A. They had no way of getting any money and offered to ship them to the store and said they were sapphires that could be cut into jewelry and had a value then at $40,000.00.

Q. Did you accept the collateral?

A. No, I never saw it and I suggested that they be shipped to Smith and one thousand pounds be put in the window and said it might be an added interest to the public to see the big pile of sapphires cut into jewelry.

Q. And Heiser agreed to that?

A. Yes, sir, and Smith too.

Q. Why did you let Smith have the $10,000.00?

A. Because, well Smith had not paid me but he had been honest with me up to that time and if the Company was a success he would commence paying me.

Q. Did Heiser or Smith say anything to you as to Smith's ability to pay the loan?

A. They both assured me that would be easy.

Q. What?

478 A. To repay the loan.

Q. How?

A. Smith would pay me out of his profits.

Q. Did he tell you anything else about what the new venture would do?

A. Heiser was to ship the sapphires to Smith and Smith was to cut them and Heiser was going on a brief trip to Europe, either Germany or France and said something about France having a monopoly on this kind of business, but anyway he wanted some kind of a deal made in Germany to handle certain stones there, and he claimed they, Heiser and Smith would get a percent out of the business and he said this trip would take two or three months.

Q. You let Smith have this $10,000.00 on the strength of

these statements made to you about the corporation and on Heiser turning over to you these stones?

A. All of them, and he was to put $10,000.00 in the window.

Q. You mean Smith?

A. Yes, sir.

Q. Was any statement or any other conversation about you going in the Company?

A. There were many statements made, yes, but I was not to go into the Company. They wanted me to go and I finally said, that is go to Australia or Europe or somewhere, and I finally said that I could not go but my brother happened to be there and he might go.

Q. What was his name?

A. Herman. If he would go out and inspect the sapphire mines and this dredge that needed repairs, look at it and perhaps purchase another one and he might stay there and work, and that pleased Heiser and then I made the
479 arrangements for him to go in two or three weeks.

Q. Where was that arrangement made?

A. In the basement of my wife's home.

Q. Who was present?

A. My brother, my wife all the time except she might have gone upstairs for water or something, and Heiser and Smith part of the time, part of the time Calvin Smith was upstairs talking to my mother and there was one attorney there, I am not sure which one, it might have been Cobb or Hornsby.

Q. Anyone else there?

A. Earnsharp was there.

Q. And that was in the basement of your home?

A. Yes, sir.

Q. Will you repeat the agreement made on that occasion?

A. The agreement was my brother and Heiser would go to Australia in two weeks and not later than three weeks and they left with the understanding it would be about two or three weeks. They were to inspect the mines which Heiser told about, the gravel and seine and to repair the dredge.

Q. Was that agreement ever carried out as far as you know?

A. No, my brother waited two weeks for him. Heiser

said he had to go back to San Francisco to ship the sapphires to Smith but he shipped them to the bank and Heiser left for Europe and Smith went to New York and took another man by the name of Graves with him.

Q. How soon after you agreed to let him have that $10,000.00 was this agreement to go to Australia made?

A. The money was given to them approximately
480 the middle of August and the 2nd day of September I left for Oregon, it was between those two days. I think in two or three days after the check was issued.

Q. And immediately after that Heiser and Smith disappeared?

A. Yes, they could not be found.

Q. And you left the 2nd of September?

A. Yes, sir.

Q. And where did you go?

A. To Oregon.

Q. How long did you stay in Oregon?

A. Until the 20th of November.

Q. Then where did you go?

A. To Los Angeles.

Q. How long did you stay here?

A. A week or ten days.

Q. Did you see Heiser or Smith during that time?

A. No, sir.

Q. Then where did you go from there?

A. I never looked for them at all, they looked for me.

Q. After you got back to Los Angeles in November did you look for Smith to see how he was getting along?

A. No, I came on to Oklahoma.

Q. How long did you stay there?

A. I think until about March or April, the first of April.

Q. What was your business back here during that time?

A. I was perfecting a block of acreage out southeast of Lone Grove, getting ready to drill a well.

Q. Did you subsequently drill that well?

A. Yes, sir.

481 Q. Then you returned to Los Angeles about the first of April, 1929?

A. Yes, sir, I stayed here until about the first of April, and returned.

Q. Did you see Heiser or Smith upon your return?

A. Not Heiser but I looked for Smith, I heard rumors he had made some—

By Mr. Turnbull: We object to that, his rumors.

By the Court: Sustained.

By Mr. Fischl:

Q. Did you receive any reports as to his financial condition or as to the Golden State Gem Company?

A. Yes, sir.

Q. Did you go to the place of business of the Golden State Gem Company?

A. Yes, my wife and I drove down there six or seven times looking for him.

Q. What was your purpose?

A. Trying to see Smith.

Q. Did you finally catch him?

A. Yes, finally.

Q. Did you observe the condition of the store at that time?

A. Yes, his sister was there the first time and a lot of stock was missing, great quantities of it.

Q. You mean stock that was there before you left?

A. Yes, sir, and his sister said she did not know where it went, and there was some monies that he was owing and it was getting in bad financially, financial bad shape.

Q. What conditions, or what connection did the sister have with the business?

482 A. She owns practically a half interest in it. There was seven or eight thousand dollars in stock held outside of the family.

Q. Was she an officer of the Company?

A. Yes, she was, I don't remember now.

By the Court: What company?

A. The Golden State. Her name was Buck, she had one son and Smith's father was living too and they all had stock. There was one other woman outside of the family that had $7500.00 in stock and the other was small amounts, maybe two to three hundred dollars.

By Mr. Fischl:

Q. In other words the Company was in bad?

A. Yes, it had been sued and maybe an attachment gotten out.

By Mr. Fischl: If the Court please, in connection with this witness' testimony, we desire to offer in evidence as our Exhibit HH, a transcript of the proceedings in case 275,003 in the Superior Court of the State of California in and for the County of Los Angeles, styled Adolph Kosches doing business under the fictitious firm name and style of Kosches Bros. as plaintiff vs. The Golden State Gem Company, a corporation, defendant.

By Mr. Turnbull: We object to that on the ground it has no connection with this proceeding at all and it is a case brought by Adolph Kosches upon a promissory note signed by Smith, it has no connection with this case or with
483 this witness as far as I am able to see, it has no connection with this case and the witness has not mentioned this suit and if there are recitals in this matter that would be advantageous to this witness we would be entitled to examine Kosches on it.

By the Court: What is the theory?

By Mr. Fischl: I assume from counsel's statement he is not familiar with the issues here. The judgment creditor alleges in his complaint, upon which he obtained judgment and which is the subject of attack here, that this witness and Smith agreed to pay all the debts of the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and it is our theory that one became merged into the other and they were both the same. In fact, they allege the witness here was to pay all the debts of the Company and put the Company on a sound financial basis, that he was to furnish the money to do it and Heiser further alleges that relying upon that agreement he put the so-called gems in the bank at Los Angeles and then he alleges that after he left this debtor and Smith conspired to defraud him of his stuff, and in connection with Kosches Bros., they allege he filed a foreclosure suit and attached this property to defraud him of his stuff, and we are
484 offering this to show the absolute falsity of that statement and this is a vital chain in the link, and this transcript shows that after Woodruff let Smith have the

$10,000.00, relying on the agreement that Smith and Heiser had made, Smith executed a note on December 18th, 1928; that Smith and Heiser disappeared after they got Woodruff's $10,000.00 and this note was executed on December 18th, 1928 and suit was filed on that note April 1st, 1929, about the time that the witness had returned to California and learned that the Golden State was in financial straits and it is to show the statements in the complaint are not founded upon the truth and to show Woodruff's action was taken to protect himself.

By Mr. Turnbull: Counsel says it goes to show this judgment should be set aside because of perjury. I don't think there is any law in Oklahoma or California that permits a judgment to be set aside on account of perjury. The finality of the judgment must be considered. What some other judge thinks about it is immaterial, a judgment cannot be set aside on account of perjured testimony, I have a long list of cases on that. Also a long list of cases from the United
485 States Supreme Court where a judgment is attacked for fraud. (Long list of cases cited.) That is a legal question and I am raising it now. I think it is sound. I think all the cases are the same way as to the finality of judgment and I object to it on the ground and for the purpose that counsel offered it. It is incompetent, irrelevant and immaterial.

By Mr. Fischl: It is to show the attachment feature of the case, if the Court please.

By the Court: I will overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. After you obtained the information as to the Golden State what did you do about it in April of 1929?

A. When I caught Smith he said he had not received any money.

Q. Not what Smith said, what did you do?

A. He had not taken any money from the new corporation which had already been formed and he had labor down there that was overdue and would have to close down and he would not make me any explanation as to the disappear-

ance of the stock, and there was this judgment against him and this woman with $7500.00 worth of stock, she wanted her money and I told Mr. Smith he had to do something or put it in the hands of an attorney, that I would put it in the hands of an attorney.

Q. Did you?

A. Yes, sir.

486 Q. What attorney did you see?

A. Coleman.

Q. What action did he take?

A. He took action on the foreclosure of the $18,000.00.

By Mr. Turnbull: We object to this witness' testimony as to that, the record is here, all of it.

By Mr. Fischl: There never was any record proceedings, any Court proceedings in the foreclosure of the $18,000.00 mortgage.

By Mr. Turnbull: I am in error as to that, if he has reference to that foreclosure.

By Mr. Fischl:

Q. Did you foreclose your $18,000.00 mortgage?

A. Yes, sir.

By Mr. Turnbull: We object to that on the ground it is not the best evidence.

By Mr. Fischl: We offer in evidence, if the Court please, a certified copy of the judgment roll, as our Exhibit "II" and our Exhibit "JJ" a transcript in the case of Leonard Woodruff, plaintiff, vs. Golden State Gem Company, a California corporation, and Golden State Gem Company of Nevada, a Nevada Corporation, defendant.

By Mr. Turnbull: These are promissory notes signed by Smith and Woodruff in favor of someone else.

By Mr. Fischl:

Q. Had you previously endorsed notes for the Golden State?

A. Yes, sir.

Q. You remember the amount?

487 A. It was to the Jeddis Company, I think one of them.

Q. Was that for the Golden State Gem Company, the California corporation?

A. I think so.

Q. Do you remember the circumstances under which you endorsed that note?

By Mr. Turnbull: If the Court please, if counsel merely wants this for the record all right, but I object to it, it has been a long time ago, and we do not know anything about it.

By Mr. Fischl: If the Court please, the gentleman is off balance as usual, he knows all about it and knows we have a copy of the record here.

By Mr. Turnbull: He has a certified copy of it, he says, and he says he is offering it in evidence. We started this case two or three years ago and that is a long time, for me to remember, and when it comes to fourteen years, since this proceeding was had, that is too long a time for anyone to remember.

By Mr. Fischl: The judgment under which the attachment was issued and the stones sold, and the judgment and the suit based upon the two notes of June 20th, 1928.

By Mr. Turnbull: And this Jeddis note is dated in November of 1926.

By Mr. Fischl: You don't know what you are talking about there either.

488 By Mr. Turnbull: I am objecting to his leading the witness. I am saying the notes in favor of Jeddis are dated in November of 1926.

By Mr. Fischl: These notes are dated in January of 1928.

By the Witness: One of these notes was to run for eighteen months and one for a year.

By Mr. Fischl: How much were the notes for?

A. They amounted to around $1100.00, or a little more.

Q. When you signed the notes?

A. I think he had reduced them a little at that time, Smith paid a little on them. It was a little over $1100.00, these are two of the notes.

Q. These are two notes as shown by Exhibit "JJ"?
A. Yes, sir.
Q. Did you have to pay the notes?
A. I paid one in full and I paid about $350.00 on the other and Smith paid $150.00.
Q. When was that you paid those notes?
A. Well, I think the latter part of 1929.
Q. I show you the two notes as shown by Exhibit "JJ", it shows the notes were paid on April 9th, 1929, is that about the correct date?
A. I guess so.
Q. Did you turn the notes over to your attorney for collection?
A. Yes, sir.

By Mr. Turnbull: He only read the endorsement on one of the notes.

By Mr. Fischl: That is all I wanted to read.

By Mr. Turnbull: Counsel only read from one note and it does not so recite.

489 By Mr. Fischl: You can cross examine him, when I get through. I offer this transcript, Exhibit "II" and "JJ" in evidence, that is the transcript on which the suit was brought wherein Leonard Woodruff was plaintiff and the Golden State Gem Company, a California corporation, and the Golden State Gem Company of Nevada, a Nevada Corporation were defendants.

By Mr. Turnbull: I object to it for the reason he has already offered it.

By the Court: Go ahead.

By Mr. Fischl:

Q. Mr. Woodruff, did you attend the Sheriff's sale?
A. Yes, sir.
Q. Where was that held?
A. In Los Angeles in the storage or wholesale house.

By Mr. Turnbull: We object to that, the instrument shows where it was sold and the return is in evidence.

By Mr. Fischl: What was sold at that sale?

By Mr. Turnbull: We object to that, the transcript shows the sale by the Sheriff and the return of the Sheriff.

A. There was thirty-five or thirty-six sacks of rocks that I saw there for the first time.

By Mr. Turnbull: At this time we move to strike the answer of the witness which now shows it is contrary to the Sheriff's return and the Sheriff's return shows the date of the sale and what was sold and to whom it was sold.

490 By Mr. Fischl: We are not attacking the return of the Sheriff.

By Mr. Turnbull: It will be shown that Mr. Woodruff bought it in at his own sale and he took thirty-five sacks of it to his home and kept it for months and months, and then afterwards when he offered it back Mr. Heiser said the good stuff was taken out, and we say all this is incompetent.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl: How many bidders were there that day?

A. There were about nine people there, about five bidders, the others were not interested.

Q. Did you buy some stuff at that sale?

A. Yes, the second block.

Q. Who bought the first lot?

By Mr. Turnbull: We object to that on the ground it is not the best evidence.

By the Court: Overruled.

By Mr. Turnbull: Exception.

A. Irving Oreck bought the first lot.

Q. What did you buy?

A. He bought one sack and I bought the remaining sacks for $1,000.00.

Q. Do you recall how many sacks you bought?

By Mr. Turnbull: We object to that on the ground it is not the best evidence and is an attempt to contradict the record.

491 By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Do you remember how many sacks you bought?

A. Some of the sapphires were on the floor, they were piled up.

Q. Were they sacked up later on?

A. There were thirty-five closed sacks and two or three sacks on the floor.

Q. That is what someone told you?

A. No, I examined them.

Q. What you examined, and the stuff you bought, at the warehouse there, what did you do with it?

A. I left it there for several months.

Q. Left it there in storage?

A. Yes, sir.

Q. In whose name was it stored?

A. In my name.

Q. Then when did you take it out of there?

A. I took it out of there in something like eight or nine months.

Q. Why did you take it out?

A. They were attacking me on the thousand dollar value and this man Oreck, about two days after his bought his sack came and tried to get another sack from me.

Q. Why did you take that stuff out of storage?

A. It was not worth what I was paying for the storage, fifty or sixty dollars a month.

Q. You took it out on account of the storage charges?

A. Yes, sir.

Q. Where did you put it then?

492 A. Up at the house.

Q. How long did it stay there?

A. Something like eighteen months.

Q. During the time after you bought that stuff at the Sheriff's sale and all the time it was in storage and during the time it was at your house, did you take anything out of the sacks?

A. No, it was in a room with a locked door, outside of the truck drivers no one knew it was there.

Q. Did you take anything out of there, any stone or any kind of material out of any of those sacks?

A. No, I did not.

Q. Did anyone else to your knowledge?

A. No, sir, they did not.

Q. Or down at the warehouse?

A. No, sir.

Q. What eventually happened to it?

A. The door was never unlocked.

Q. What happened to it after that?

A. Heiser went down to a British Consul and said someone has misappropriated his sapphires and he complained to the American Consul and it was taken to the Grand Jury.

Q. Where were you at that time?

A. At the hospital.

Q. Who attended to this for you?

A. My wife.

Q. Did you have an attorney communicate with you at the time?

A. Yes, sir.

Q. Who?

A. Hornsby and Cobb.

493 Q. At that time had anything been taken out of the sacks?

A. No, sir.

By Mr. Turnbull: We object to that as incompetent, irrelevant and immaterial. This witness did not state that he took this stuff to the Grand Jury.

By the Court: He said it was thereafter taken to the Grand Jury.

By Mr. Fischl:

Q. That is what you said?

A. I was in the hospital and my wife came and said the Grand Jury wants an explanation, and she said, "They are wanting to get that stuff and you are not strong enough to look after it," and I said, "You get two men and follow them and don't put that in my name or in no member of the family, and ask the Grand Jury to put it in escrow and keep it there until it was settled".

Q. Had you taken anything out of the sacks?

A. No, sir.

Q. Or had anyone else during that time?

A. No, sir.

Q. Had you learned before the Grand Jury matter came up, had you learned that Heiser was claiming anything was taken out of the sacks?

A. No, sir.

Q. You instructed your wife to put that in storage or in escrow?

A. The Grand Jury would not accept that responsibility, and Heiser got on the truck and saw every bit of that stuff and knew all about it, and then he said he was not there, that he was sick in bed.

494 By Mr. Turnbull: We object to that as hearsay, if the Court please.

By the Court: Sustained as hearsay.

By Mr. Turnbull: I would not object if it was the facts.

Q. Have you ever taken anything, anything of any value or any property of any kind out of this so-called raw gems?

A. No, sir, I never did.

Q. Have you ever been repaid any part of the $10,000.00 you loaned to Smith?

A. No, sir.

Q. Mr. Woodruff, state whether or not you ever made any statement to Mr. Heiser or any statement in his presence in reference to the assets of the Golden State Gem Company of California.

A. One time and at that time I referred him to a firm of accountants there that had taken an invoice of the Smith assets, I had seen it and Heiser told me he had seen it.

Q. An inventory of some sort?

A. Of his stock, yes, sir.

Q. Tell the Court whether or not you relied on that inventory, to some extent, in advancing the money you advanced to Smith.

A. Yes, sir, it showed three hundred and twenty thousand or three hundred and sixty thousand dollars worth of assets.

Q. Did you have anything to do with making that inventory?

A. No, I hired the same company of accountants once or twice myself and they were considered reputable.

Q. Did you tell Mr. Heiser that Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis of the City Engineering Company of Detroit, a Mr. Howe of Chicago, Feagen
495. & Company, Brock & Company, and the leading jewelers of the United States were regular customers of the Golden State Gem Company?

A. No, that was Heiser and Smith swapping stories. They sat there and talked about that kind of business and swapped stories for hours.

Q. Smith was building up his company and Heiser his mines, is that right?

A. Yes, sir.

By Mr. Turnbull: We object to that as leading and suggestive.

By Mr. Fischl:

Q. This man Heiser, the plaintiff, alleged in his complaint this paragraph C., on page seven that, "The defendant Woodruff requested that plaintiff send for his said raw gems in San Francisco as aforementioned and more particularly described in paragraph VI hereof, which said raw gems were then in San Francisco, and bring them to Los Angeles so that the defendant, Smith, could examine the same for the said Woodruff and that the said Woodruff proposed and represented to plaintiff herein as follows, to-wit: If the said defendant Smith approved of the said raw gems aforementoined, that he, the said Woodruff, would finance the said mines and leases of the said plaintiff herein—"

A. No, he suggested that, Heiser suggested that we do all that and I merely suggested that they put $1,000.00 worth in the window up at Smith's place and he had thirteen cutters at the time, but these were not gems but rocks.

Q. Were those the same gems that Heiser represented as being worth *$40(?),000.00?*

496 A. Yes, sir.

Q. It says here that "if the defendant Smith approved of the said raw gems aforementioned, that he, the said Woodruff, would finance the said mines and leases of

the said plaintiff herein; that the assets of the said Golden State Gem Company of California, an agency through which he the said Woodruff and the said Smith operated on the basis of two-thirds to the said Woodruff who financed the same, and one-third to the said Smith who ran the business."

A. There is not a word of truth in any of that.

Q. "That the Company had an indebtedness of about $15,000.00 to general creditors which he, the said Woodruff, would forthwith pay and satisfy," did you agree to pay that amount?

A. No, sir, not one cent.

Q. And it goes on to say that "the said Woodruff held a chattel mortgage on certain assets of said Company of $18,000.00 as a protection against creditors should any emergency arise, which he the said Woodruff would forthwith cancel and satisfy, and that he, the said Woodruff, held certain gems of the value of about $75,000.00 in a box in one of his vaults as security for certain other money which the said Company owed him"?

A. No, sir, that is not true.

Q. Did you agree to cancel the $18,000.00 you had against Smith?

A. No, sir, I did not. I did agree to put off the collection of it, of forcing Smith to pay it in order to give Smith a chance to repay me.

Q. And it says "which indebtedness he would also
497 cancel and which gems he would forthwith return to the said Company," is that true?

A. It was all optional and depended on my brother going to Australia.

Q. If he did go there and came back and proved the mines were there what were you to do?

A. It was still optional with me. If he had said there were mines there I would have advanced more money but there was no definite amount, but I would have repaired the dredge he was complaining about needing repair, that is if it had been necessary, but afterwards I found out there were not three sapphires in that whole mine.

Q. And then it goes on to say that the said Smith and Woodruff would cause to be formed by their lawyer, whom they named as Alfred Barstow, a corporation to be known

as Golden State Gem Company of Nevada, did you agree to organize any such Company?

A. I had nothing to do with it, no, sir.

Q. Were you to do that?

A. No, I told them to go ahead, I had no financial obligations other than I had already loaned Smith some money, that is all I had to do with it and all I was going to have to do with it.

Q. Were you to be interested in the Company?

A. No, sir.

Q. Did you know this fellow Barstow?

A. No, sir, I did not.

Q. Did you hire him?

A. No, sir.

Q. Did you hear Heiser or Smith say who had
498 hired him?

A. Smith said that Heiser hired him.

Q. Heiser present when Smith said that?

A. He was in Los Angeles when they were discussing it.

Q. Were you interested in any way as to the organization or formation of a corporation or company or who the lawyer might be?

A. No, sir, I was only interested to the extent that Smith pay me what he owed me.

Q. And then on page nine it says, "That the said Woodruff and Smith immediately upon the incorporation of the said Nevada corporation would cause to be assigned to the said corporation the said assets of the said Golden State Gem Company of California of the value of $420,000.00, free and clear of all indebtedness whatever?"

A. No, there is nothing to that, they merely reached up and got that out of the air.

Q. Did you have any control over any of the assets of either company?

A. No, sir.

Q. And "that thereupon the plaintiff herein should contract with the said company for the account of the Heiser Burmah Sapphires Ltd., for a period of forty years to sell it all the sapphires and opals and other gems owned, mined, bought or produced at prices as follows: Best Blue Sapphires—$50.00 per oz; Second Blues—$25.00 per oz; Third

Blues $10.00 per oz; Fourth Blues—$5.00 per oz; Industrial Sapphires—from 25c per oz. to $10.00 per oz.; Rough Opals $1.00 to $40.00 per oz.; Cut Opals—25c to $2.00 per carat; Opal Beads—$1.00 ea. to $3.00 each, sizes from 3 mm. to 10 mm; Opal Doublets—50c each to $5.00 each; Cut Sapphires Best Blue—$10.00 per carat; Second Blue—$5.00 per
499 carat; Large Best Fancy Colored Sapphires—$40.00 per oz.; Second Best Fancy Colored Sapphires—$20.00 per oz.; Third Best Fancy Colored Sapphires—$10.00 per oz.; And for very special rare gems, whether diamond, opal, emerald or sapphire, a special price be mutually arranged satisfactory to both parties." Did you have any such agreement with Heiser or Smith?

A. No, I don't know anything about what that is. I did not have any such agreement and do not know anything about that.

Q. What they were to pay Heiser?

A. No, I don't know anything about that.

Q. A contract for a period of forty years to sell it all the sapphires and opals and other gems mined, bought or produced at prices as follows, the prices I have read you heretofore?

A. That is ridiculous, that is ridiculous, no one would make any such contract as that, that is silly.

Q. Did you ever enter into any discussion to direct the terms or the conditions or the amount of stock to be issued or anything else in regard to the Nevada Corporation?

A. No, I believe I did suggest to Cal Smith at one time to keep it down as low as possible.

Q. On Page Nine it says, "That the Nevada Corporation should have a capital of $1,500,000.00 of preferred stock and $3,500,000.00 of common voting stock; that the said pre-
ferred stock should be $10.00 per share with interest
500 at 80c annually. That $3,500,000.00 of said stock be divided equally, one-half to plaintiff herein and his nominees and one-half to defendants Smith and Woodruff, one-third of which one-half was to go to Smith and two-thirds to the said Woodruff."

A. No, there is not a word of truth in that.

Q. And it says that a majority of the said stock so al-

lotted was to be pooled for five years for the purpose of retaining control between the said parties.

A. Well, I don't know anything about that, I never even heard of it.

Q. You had nothing to do with that?

A. No, sir, I did not.

Q. "That in return for the issuance of the said stock to plaintiff, plaintiff herein should cause to be transferred to the said corporation 10,000 cumulative, preference and participating shares of 1 each, of the Heiser Burmah Sapphires, Ltd. treasury stock and 2,000 of the ordinary voting shares of the said stock with the further provision that the said new corporation to be formed would be financed by the said Woodruff, and that $150,000.00 would be made available by said Woodruff over a period of eighteen months to be furnished as required, and $30,000 in cash made available by the said Woodruff for the immediate uses of the corporation, and that the said Woodruff forthwith cause two steam shovels as required to be sent to Australia and that the said corporation would further send over to Australia for development of various diamond properties then held by claim titles of plaintiff, in the neighborhood of $200,000.00
501 to be used for constructing dams, flumes, laying pipe lines, building machines that would save the diamonds, buying different machinery, meeting payrolls, for the diamond and emerald deposits then held by plaintiff in the form of claims or holdings, and that plaintiff should further transfer to the said company free of encumbrances 30,000 oz. of Industrial Sapphire, part of the said raw gems aforesaid then held in San Francisco by plaintiff." Was any such agreement as that made between you and Heiser and Smith?

A. No, sir. That was all a big fantastic tale of Heiser's and I did agree that my brother could go to Australia with him and look at what he claimed to have over there, and then Heiser ran off and he never had any mines anyway. Any agreement I might have had with Heiser was conditioned upon my brother going to Australia.

Q. Are these allegations, which I have been asking you about true or false?

A. Absolutely false.

Q. And it goes on to say on Page Ten, "That the said plaintiff herein would be paid a salary of $25,000.00 per year by the said corporation so to be formed by defendants, together with all of his expenses, and that the said plaintiff herein should immediately proceed to London and Europe for the purpose of obtaining orders and negotiating for business, and that the plaintiff herein should advance the expenses of the said trip until he arrived in London, and that defendant Woodruff would see that funds were forwarded to him in London to reimburse him for his outlay of expenses, and would from that time on advance
502 expenses of the plaintiff as required."

A. Wherein he says he was going to Europe, that is the truth.

Q. Going to London first?

A. One way or the other, that is all the truth there is in that entire statement, he said he was going to London and Europe. He already had the $10,000.00 and Smith went to New York but he was left there.

Q. Did you agree to send any money to London for the benefit of Heiser?

A. No, sir.

Q. Did you ever hear from Heiser after he left for London?

A. No, not me.

Q. Then on Page Eleven he further says, "That Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems aforesaid and described in Paragraph VI hereof and then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight sacks totalling over forty-two hundred lbs. of raw gems, and the said large piece of jade weighing twenty-eight lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed."

A. There is not a word of truth in that.

503 By the Court: It is now twelve o'clock and we will recess until one o'clock.

(Whereupon Court recessed until the hour of one o'clock this day.)

Thereafter and on the same day, at the hour of one o'clock P. M., Court met pursuant to recess taken for the noon hour, after which the following further proceedings were had herein:

LEONARD WOODRUFF recalled, having heretofore been duly sworn as required by law, testified as follows:

By Mr. Fischl:

Q. Mr. Woodruff, he alleges, the judgment creditor Heiser alleges in his Complaint 7256-C, on Page Eleven, "That said Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight sacks totalling over forty-two hundred lbs. of raw gems, and the said large piece of jade weighing twenty-eight lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed, only and not before the assets of the said

504 Golden State Gem Company of California, so represented by said defendants to have a value of $420,000.00, were transferred to the said new company to be formed, free and clear of all indebtedness whatever, and that thereupon and thereafter the said new corporation so to be formed would purchase and pay therefor to the said plaintiff herein, c.o.d., such of the balance of the said raw gems as might be required by them from time to time or such as the said defendant Woodruff might desire to purchase from time to time for said corporation at the price stipulated in the aforementioned agreement and as more particularly set out in subdivision c hereof, and the said defend-

ants did further represent to plaintiff herein that the said raw gems aforementioned in Paragraph VI hereof, and each and all of them, would be perfectly safe in the said United States National Bank under the said conditions, and would be protected at all times by the said defendants and each of them for the account of the said plaintiff, and that the said 30,000 oz. of Industrial Sapphire would be removed only under the condition aforementioned and not otherwise, and that the remaining portion of the said gems valued in excess of $130,000.00 would only be removed provided such as were removed would be paid for forthwith to plaintiff herein as removed, and any of the said gems so removed would be paid for in cash by the said defendants by depositing the said cash to the account of the said plaintiff herein in the said United States National Bank, which account was opened by plaintiff herein under said agreement with the said
505 defendants in the name of Australia American General Mining Company by plaintiff herein.'

Are those allegations true or false?

A. They are all false.

Q. Mr. Woodruff, did you know when this material was placed in the United States National Bank as mentioned here at Eighth & Spring Street?

A. No, it was to be turned over to Smith, it was not to be put in the bank, I did not know anything about that.

Q. Was that the agreement under which you let him have the $10,000.00?

A. Yes, sir, that it was to be turned over to Smith?

Q. Did you ever ask the bank if that stuff was there?

A. No, sir, I did not.

Q. Did you ever see the stuff in the bank?

A. No, sir, it was not supposed to be placed there.

Q. Did you ever go to the bank to try to get permission to see the stuff?

A. No, sir, the first time I ever saw it was at the Sheriff's sale.

Q. Then in Paragraph E, "Thereupon said defendants did through their said attorney Alfred Barstow prepare the formation of the said corporation to be known as Golden State Gem Company of Nevada, stating to plaintiff that it was for the purpose of carrying out the said representa-

tions and promises and did cause the said company to be incorporated. That plaintiff relied upon and thereupon relying upon the said representations, each and all of them, and believing them to be true, and without which repre-
506 sentations and belief therein plaintiff would not have so acted, plaintiff proceeded to bring the said raw gems described in Paragraph VI herein, to Los Angeles, and acted as hereinafter set forth." You say you had nothing to do with forming the Golden State Gem Company of Nevada?

A. No, sir, not a thing in the world.

Q. Then reading further from Paragraph E., "That the said raw gems and all of them did arrive in the City of Los Angeles on or about the 13th day of August, 1928. That on or about the 16th day of August, 1928, and relying upon said representations and believing each and all of them to be true, plaintiff did cause the said gems to be deposited in the said depository at the said United States National Bank at Eighth and Spring Streets, Los Angeles, California, and did give the said defendant Smith access thereto. That thereupon the said defendant Smith did examine the said gems and did approve the same and did proceed with the said plaintiff herein to the office of the said defendant Woodruff. That at said time the said defendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California." Mr. Woodruff, do you remember whether or not you saw Smith after this agreement to go to Australia was made before you left Los Angeles?

A. I am not positive, I am sure I did not. I know I did not see Heiser and did not know the sapphires were in town.

Q. Then it says, "That at said time the said de-
507 fendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California, but that the said attorney Barstow was more familiar with incorporation matters, for which reason the said Coleman had not been used to incorporate the said Nevada Company and that

the said Barstow had incorporated their said agency the said Golden State Gem Company of California. That said defendant Woodruff did there and then state to this plaintiff that he had cancelled and released the said $18,000.00 indebtedness of the Golden State Gem Company of California and the said Chattel mortgage securing the same and that he had cancelled and released the indebtedness and lien covering the $75,000.00 worth of gems of the Golden State Gem Company of California which he held in his safe deposit box which he had returned to the said Golden State Gem Company of California, and he, the said defendant Woodruff did then and there in the presence of this plaintiff hand to the said defendant Smith checks totalling approximately $10,000.00 which defendants then and there stated was sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 were then and there free and clear of all indebtedness of whatsoever nature, and the said defendant Woodruff did then and there state that he would give to the new corporation as and when required for financing, a further sum of $30,000.00." Are those allegations true or false?

508 A. Absolutely false.

Q. And furthermore, "He would forthwith sell shares in Oklahoma and otherwise, and that he would immediately put the company upon a financial basis so that it could conform with its agreement and that plaintiff herein need have no further financial worries." Is that true or false?

A. Well, I never heard anything about it, it is false as far as I am concerned, I was not concerned over his financial worries.

Q. Did you ever sell stock in any company?

A. No, sir.

Q. Or did you ever sell any stock in that company?

A. No, sir, I never did.

Q. Were you ever engaged in selling stock in any way?

A. No, sir.

Q. And then it goes on to say, "That none of the gems of the said plaintiff in the said vault at the said United

States National Bank except the said 30,000 oz. of Industrial Sapphires would be removed in any form unless payment therefor at the price agreed upon was first deposited to the account of the said plaintiff in the said bank, and that the said assets of the said Golden State Gem Company of California valued at $420,000.00 would be forthwith transferred to the said new Golden State Gem Company of Nevada free and clear of all indebtedness, and that thereupon the said Woodruff and the said Smith would cause to be transferred to the said Nevada company the said 30,000 oz. of Industrial Sapphires, and that the said 30,000 oz.
509 of Industrial Sapphires would only be transferred to the said Golden State Gem Company of Nevada after the transfer of the assets of the Golden State Gem Company of California free and clear of all indebtedness whatever." Is that true or false?

A. Smith and Heiser were having a written contract as to that and I was not concerned in it.

Q. These are the statements of the petition?

A. There was no written contract as far as I am concerned as to any of it, but that was to be in the corporations between Smith and Heiser that I had nothing to do with.

Q. Not any of this is true then so far as you know?

A. No, sir, it is not.

Q. "That thereafter the said defendant Woodruff and the said defendant Smith did state and represent to the said plaintiff herein that the formation of the said Golden State Gem Company of Nevada and had been completed and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 had been delivered over to the said Golden State Gem Company of Nevada free and clear of all indebtedness, and thereupon plaintiff herein did cause to be transferred to the said corporation the said shares aforesaid. That thereupon said defendants Woodruff and Smith did represent to plaintiff that if he would forward the sum of $5,000.00 to his mines in Australia, he the said defendant Woodruff upon arrival of plaintiff in London, would cable to said plaintiff the sum of $5,000.00 to reimburse plaintiff for said advance, and that said plaintiff did forthwith forward to the said Heiser Burmah
510 Sapphire Mines at Australia the said sum of $5,000.00,

relying upon the said representations and believing them to be true." Is that true or false?

A. That is not true at all as far as Smith is concerned I don't know however, but as far as I am concerned, it is absolutely false.

Q. Those statements are not true as to your part of it?

A. No, sir.

Q. Then he further alleges in Paragraph Fifteen, "That in furtherance of the said conspiracy and as a part thereof and further acting fraudulently and deceitfully and for the purpose herein alleged, said defendant Woodruff did on or about the 2nd day of April, 1929, through said defendant Coleman as attorney, filed a certain suit in the Superior Court of the State of California, in and for the County of Los Angeles, No. 275092, wherein and whereby the said defendant sought to foreclose the chattel mortgage," you did foreclose your mortgage?

A. Yes, sir, I would not say that there was any fraud in it or deceitfulness, I did foreclose my mortgage, try to.

Q. Did you have any agreement with Smith that he would default?

A. No, I did not. I don't know anything about any such allegation as that.

Q. You never had any agreement with him that he should default?

A. No, sir, I did not.

Q. Then in Paragraph Fifteen on Page Seventeen he says, "That on or about the 19th day of April, 1929, the said defendant Woodruff with the said defendant Coleman acting as his agent and attorney and with the knowl-
511 edge and consent of defendant Smith, further acting fraudulently and deceitfully and for the purpose of cheating, swindling, defrauding and robbing plaintiff herein of the raw gems aforesaid and particularly described in Paragraph VI hereof, and knowing the said raw gems to have a value in excess of $160,000.00 at said time, did cause to be filed in the Superior Court of the County of Los Angeles, State of California, action No. 276469, wherein and whereby said defendant Woodruff filed suit against the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and each of them as de-

fendants, on notes of the Golden State Gem Company of California given to one Jeddis & Company on or about January 20, 1928, for indebtedness of the said Golden State Gem Company of California incurred long prior thereto, one of which said notes was for $500.00 due in twelve months, upon which all had been paid but $183.15, and one of which notes was for $500.00 and was not due or payable until July of 1929, though the said suit was filed in April of 1929, and said note contained no acceleration clause and interest was payable at its maturity. That said defendant Woodruff alleged that he had purchased the said notes from Jeddis & Company, but failed to allege or disclose therein, and the facts were that the Golden State Gem Company of California had deposited as security for the payment of the said notes jewelry and merchandise valued by said defendants in excess of $2,000.00, which said collateral was then and is now and ever since April 9, 1929, has been in the possession of
512 defendants, as collateral security pledged for the payment of said notes, and the same was not foreclosed, returned or abandoned." You did have to pay the note?

A. I was endorser there in 1926.

Q. And they called on you to pay that note?

A. Yes, sir.

Q. You did pay them?

A. Yes, sir.

Q. And brought suit on them?

A. Yes, sir.

Q. Did you have any agreement with Smith about bringing that suit that he was to default therein?

A. No, sir, I did not.

Q. This petition alleges that you had $2,000.00 in collateral pledged as security for the payment of said notes, did you have any such collateral?

A. I did not have it. There was some such an amount in the bank Smith said, in stock he had purchased from some company some time previous and he was very lax in business matters, especially when he did not have the money to pay with, and he had not paid for this collateral at that time.

Q. And you never did get it?

A. No, sir.

Q. And you don't have it now?

A. No, I never did. Maybe it was some raw stones to be cut and polished.

Q. Do you know what happened to them?

A. No, I don't know. I suppose it all went back to the man who had not been paid for it.

Q. "That on or about the 19th day of April, 1929,
513 and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al. No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same has not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff."

By Mr. Turnbull: We object to that, that record is here if the Court please and he cannot collaterally attack the record that he himself has introduced.

By Mr. Fischl:

Q. So far as you know do you know if there was an attachment suit gotten out in the case, where you sued?

A. I don't know anything about it.

Q. Do you know if there was one?

A. I presume so, I don't know.

514 Q. You turned that matter over to your attorney?

A. Yes, sir.

Q. Was there any agreement or conspiracy to sue out an attachment between you and Smith or Coleman?

A. No, sir.

Q. What instructions did you give to Coleman when you turned the suit over to him?

A. I was talking to Mrs. Buck and so much of the stock in trade was missing, I got sore about it and I told Coleman to collect all he could.

Q. And you don't know if he sued out an attachment in that matter or not?

A. No, sir.

Q. If he did that, was that done by any agreement between you and Smith and Coleman?

A. Smith would not have had anything to do with it.

Q. Did Smith have anything to do with it?

A. No, sir, he did not.

Q. Then he goes on to allege, "Since Coleman and Smith well knew that defendant Woodruff had in his possession and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of whatsoever nature had been had and the said merchandise and collateral was at that time and ever since said time as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of $10,000.00 and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States Na-

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tional Bank as aforesaid were the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929." Is that true?

A. I never heard anything of it, no, sir.

Q. Any such collateral as mentioned in that paragraph never came into your possession?

A. No, sir.

Q. Then he goes on to say "that thereupon in pursuance of the said conspiracy and scheme and further acting fraudulently and deceitfully and with the intent to cheat, swindle, defraud and rob said plaintiff of said raw gems and all thereof, said defendant Smith did default in the said actions and did fail to answer or cause answer to be made in
516 the said actions to the said complaints and summons so served upon him by agreement as aforesaid, and the said defendant Woodruff and his attorney defendant Coleman under his direction did cause a default of the said Golden State Gem Company of California and the Golden State Gem Company of Nevada to be entered in the said last mentioned action on or about the 10th day of May, 1929, and did thereupon on or about the 10th day of May, 1929, cause judgment to be entered as prayed for in said complaint." Is that true?

A. None of it is true and more than that it is ridiculous.

Q. Did you have any agreement with Smith that Smith would default in that action?

A. No, sir. I never did.

Q. "That in said complaint in said action, the said defendant Woodruff with the said Coleman as Notary thereon did falsely swear to and verify the said complaint with the knowledge that the same was false and untrue and well knowing that he held security of the value of $2,000.00 for the payment of the said obligation of the said notes which have not been foreclosed upon—"

A. What notes?

Q. The Jeddis notes, he said you had security of $2,000.00 or collateral to the notes in the sum of $2,000.00, was that true or false?

A. That was false.

Q. And then he goes on to state, "And well knowing that the said obligation was not the obligation of the said Golden State Gem Company of Nevada nor plaintiff herein,
and well knowing that they had represented to plain-
617 tiff that the said obligations had been paid, and well knowing that the raw gems in the said United States National Bank at Eighth and Spring Streets, Los Angeles, as described in Paragraph VI hereof were the sole property of plaintiff herein, who alone was entitled to possession thereof, did allege in the said complaint that defendant Golden State Gem Company of Nevada had purchased the stock and assets of the Golden State Gem Company of California and had received benefits arising out of the execution and delivery of the aforesaid promissory notes and had agreed to assume the indebtedness due thereon and to pay the same; that demand had been made upon it for payment of the said sum of $183.15 and $536.25, but that while admitting it assumed liability thereon it had failed, neglected and refused to pay the same. That such allegation was known by defendants to be false and untrue and was made as a part of said scheme to obtain from plaintiff the said raw gems as herein alleged." Are those allegations true or false?

A. They are false.

Q. Now Mr. Woodruff when you first saw these stones you say they were in the warehouse, that is the time you examined them?

A. Yes, sir.

Q. What did you find?

A. Well at the Sheriff's sale you have ten or fifteen minutes to look them over. There were no windows and one light overhead and we looked in half or two-thirds of them maybe.

Q. What did you find in there?

A. We found some dark colored sapphires as they
518 called them and tried to hold them up to one light so we could see through them. We thought there might be some good ones but there was not.

Q. What was the purpose in holding them to the light?

A. You must see the light.

Q. Translucent?

A. Yes, sir.
Q. Did you find any zircons?
A. No, sir.
Q. Did you find any opals?
A. No, sir.
Q. Did you find any jade?
A. I saw what was supposed to be some.
Q. What was it?
A. A rock.
Q. This type of material that you did examine, what was it?
A. It was known by trade name as kuronzo.
Q. Did you see any gems or valuable material at all?
A. No, sir.
Q. Did you see any of those stones that were supposed to be cut?
A. No, sir, I did not see any at all, in fact there were some sacks I did not look in.
Q. You never examined it all?
A. No, sir.
Q. Sack by sack?
A. No, sir, I don't think so.
Q. And never have to this day?
A. No, sir, I have not.

519 Q. As far as you know what stuff you bought at the Sheriff's sale is now in the hands of the trustee in bankruptcy?
A. I know it is.
Q. Nothing has been taken out?
A. There were some samples taken out at the trial. I think from five to fifteen stones out of each sack. I don't know if they were ever put back or not.
Q. They were taken out by Mr. Heiser?
A. He was present and two or three others. I was not down there all the time, my son maybe was, I don't know.
Q. When you endorsed the Jeddis notes, you know the conditions under which you endorsed them?
A. What do you mean?
Q. Did you get any money out of the notes?
A. No, sir.

Q. Or from anyone else at that time?
A. No, sir.
Q. Why did you endorse the notes then?
A. For an accommodation.
Q. What was the condition that gave rise to the endorsement of the notes. I will ask you if there was a suit filed against the Golden State Gem Company about that time?
A. Yes, sir.
Q. I will ask you if these notes were given in satisfaction of that suit?
A. One was ready for judgment.
Q. These notes of January 20th, 1928, the purpose of their execution, that is what I am asking you.
A. They had a judgment and they had not executed on it and would not if I would pay so much right down.
Q. Did you do that?
A. Yes, sir.
521 Q. Did you sign the notes for the purpose of satisfying that suit?
A. Yes, sir.

By Mr. Fischl: We offer in evidence as our Exhibit KK the transcript of the proceedings in this case of Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company vs. Golden State Gem Company, incorporated, a corporation, filed in the Superior Court of the State of California in and for the County of Los Angeles, and is numbered 235,037 filed September 30, 1927.

By Mr. Turnbull: Other than for the purpose of fixing the date of the note and the date of that judgment, we object on the ground that the certified record including the judgment roll consisting of complaint, answer, demurrer to answer, minute order, amended answer, application for leave to file second amended answer with copy of second amended answer attached thereto, findings of fact and conclusions of law and the motion to strike, summons, notice of sustaining of demurrer, counter affidavit of J. A. Coleman, notice of motion to have case set for early trial, setting card, affidavit of rendering haves, notice of trial, affidavit of J. A. Cole-

man, order shortening time, etc., notice of motion for
521 leave to file second amended answer, exhibit withdrawal receipt, affidavit of service, execution with Sheriff's return thereon, are immaterial in this matter and is only offered for the purpose of incumbering the record. As far as the exhibit is concerned as to fixing the date of the note and the date of the judgment, that is all right. The Jeddis notes are here and if he wants to show they were renewal of previous notes that is all right, but why put all this record which happened back in 1927 before these gems came to California, if there are any findings in there or anything that affects Heiser in any way, I did not see it, it is entirely remote and has nothing to do with this case at all. It will only incumber the record and counsel can't give your Honor a legitimate reason for putting this in evidence.

By Mr. Fischl: If we had not brought the whole transcript they would have objected to it. The complaint and the judgment and the proceedings after judgment, we think are pertinent and we offer them in evidence. I offer the complaint, findings of fact and conclusions of law and the judgment, strike the findings, that is immaterial, the Sheriff's execution, the Sheriff's return on execution.

522 By the Court: Those are admitted, all right, go ahead.

By Mr. Fischl:

Q. Mr. Woodruff, in a statement made by Heiser with reference to this material, which he afterwards brought to Los Angeles, please state what if anything he said, if anything in reference to the source of that material.

A. Nothing further than he was mining it in Australia, and this was some of the stuff that came from the mine. It was some of the same kind of stuff he sent to France and Germany and had some conversation about England. I don't know if he was taking any of it to England or not.

Q. Did he tell you about this stuff he returned to this country?

A. No, I do not remember but I assumed his mine was in operation.

Q. Did he tell you when he brought it over here?
A. No, sir.
Q. When did you next see Heiser after he left in 1928 supposedly to return to go to Australia?
A. In Judge Cosgrove's court in June of 1939.
Q. Eleven years after that?
A. Yes, sir.
Q. Now during that time did you ever hear from him?
A. No, I never.
Q. Did you learn when he came back from Europe?
A. No, I found out later the approximate time, I don't know yet definitely.
Q. Mr. Woodruff, he sued you in another case before this one?
A. Yes, sir.

523 By Mr. Turnbull: We object to that as not the best evidence.

By Mr. Fischl: We offer in evidence at this time a certified copy of the complaint in 5587-J, United States District Court of the Southern District of California as our Exhibit "LL." We offer in evidence a certified copy of the order of dismissal of that suit as our Exhibit "MM."

By Mr. Turnbull: We object to it as incompetent in this case and further it is an attempt to have this Court pass upon something that is res adjudicata, the subject matter of the judgment.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Mr. Woodruff, did you know what became of the first case?

By Mr. Turnbull: We object to that on the ground the record is the best evidence and the record shows for itself.

By Mr. Fischl:

Q. Do you know?
A. No, sir, I know what Fitspatrick told me.
Q. You were not present in Court?

A. No, sir.

Q. Your attorney did inform you?

A. Yes, sir.

Q. Where were you, Mr. Woodruff, on the 31st day of January, 1939, were you in Los Angeles?

A. No, sir.

Q. When did you return to Los Angeles if you
524 know?

A. Some time before my son's birthday on the 27th day of February, 1939.

Q. When did you learn they had some kind of purported service on you of this summons during the time you were absent from your home?

By Mr. Turnbull: We object to that, that is the subject matter that has been passed upon and the Court has found he was served and was served that day and that is just as much res adjudicata as the subject matter of this action, and it is a collateral attack which cannot be properly made except in the Court that entered the judgment; that Court has heretofore determined the summons was good and inquired into when he was served: he raised the question that he was not served and that matter has been determined and this is a collateral attack upon the subject matter of that suit and that judgment.

By Mr. Fischl: The purpose of it is to show diligence on the part of the debtor, I think this Court would probably be interested in knowing if he was diligent at the time, but not for the purpose of showing he was properly served or not served.

By the Court: I think this Court is bound by that, we cannot go back of that and I will sustain the objection.

525 By Mr. Fischl: That is all.

Cross Examination.

By Mr. Turnbull:

Q. The Sheriff says you obtained and bought in the gems for $1,000.00. That was in the case of Leonard Woodruff vs. the Golden State Gem Company, the transcript of which has been offered in Court here?

A. Yes, sir, the only one I know of.

By Mr. Turnbull: That is all.

Witness excused.

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526 MRS. WILLIE MAE WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.
A. Willie Mae Woodruff.
Q. Where do you live?
A. 902 E. Street, Northwest.
Q. Ardmore?
A. Yes, sir.
Q. Are you the wife of the debtor, Leonard J. Woodruff?
A. I am.
Q. How long have you and Mr. Woodruff been married?
A. Twenty-eight years.
Q. You have three children I believe?
A. Yes, sir.
Q. Do you know Mr. M. E. Heiser?
A. I do.
Q. M. E. Heiser, the judgment creditor here?
A. Yes, sir.
Q. When did you first get acquainted with Mr. Heiser, Mrs. Woodruff?
A. In 1928.
Q. 1928?
A. Yes, sir.
Q. What was the occasion of your getting acquainted with him?
A. He came to the house with Mr. Smith.
Q. Where were you living then?
A. In Los Angeles at 2446 Inverness Street, City
527 of Los Angeles, California.
Q. What was his purpose in coming to your house, if you know?

A. To borrow money from my husband.

Q. Did you hear any conversation between Mr. Heiser and Mr. Smith and Mr. Woodruff?

A. Yes, sir.

Q. How many times did Mr. Heiser come to your home?

A. Well, I would not know, a number of times.

Q. Did he always come in the home?

A. Yes, sir, and when he would come in—on a few occasions he did not come in, Mr. Woodruff was too ill to see him.

Q. Was Mr. Woodruff home ill at the time?

A. Yes, sir.

Q. Did he have anything with him when he came to the house?

A. He had one Australian live bear in the car and some stones.

Q. What was he doing with the teddy bear?

A. Trying to sell them.

Q. Did you hear any conversation between your husband and Mr. Heiser and Mr. Smith?

A. Yes, sir.

Q. What were those conversations about?

By Mr. Turnbull: By this evidence he is seeking to collaterally attack the final judgment of the United States District Court of the Southern District of California and the final judgment rendered by the Circuit Court of the Ninth Circuit and this evidence is not competent in any way, and we object to it, if the Court please.

528 By the Court: Go ahead.

By Mr. Turnbull: Exception.

A. He was talking to him about borrowing money from my husband.

By Mr. Fischl:

Q. You remember anything that was said there?

A. Mr. Heiser said he had a lot of valuable mines in Australia and wanted to go in with Mr. Smith and form a new corporation and if Smith would get hold of cash enough to form the corporation they could make a lot of money.

and my husband, he had already let Mr. Smith have all the money he could let him have so they kept coming up and talking and Smith said, "If I could get the money and go in with Heiser, I can pay you back all I owe you in a short time," and my husband finally let them have $10,000.00 and Heiser agreed to ship some rough stones or sapphires, as he called them, down to Smith that Heiser had up at Los Angeles he claimed, and they had some sort of agreement that my husband's brother would go with Heiser to Australia and that was all that he would let him have.

Q. Did you hear Mr. Heiser and Mr. Smith and Mr. Woodruff agree what was to be done with that stuff, these stones or jewelry or gems or whatever it was?

A. It was to be sent to the Golden State Gem Company and put some of it in the window and have the stone cutters to start cutting it.

Q. Any discussion as to how much he was to put in the window?

A. Well, I do not remember but it was a large
529 amount.

Q. What did Mr. Heiser say in that connection?

A. He said he thought it would help Smith's business if he could get the rough stones in the windows and with his help he could make Smith worth several million dollars in a short time.

Q. What was said about going to Australia?

A. He first wanted my husband to go, he said that he could go and see them, and Mr. Woodruff said he could not make the trip but his brother might go with him.

Q. Who was his brother?

A. Herman Woodruff.

Q. What did Herman Woodruff say about that?

A. He said it would be all right and he said he had to go back to San Francisco and in about two weeks he could go, and he was to come back to Los Angeles and go from there.

Q. When was that with reference to the time your husband let them have $10,000.00?

A. Not very long after he loaned them the $10,000.00 and they wanted more money.

Q. Did you hear any discussion about the organization of the Company?

A. Yes, sir.
Q. Who was going to do that?
A. Mr. Smith and Mr. Heiser.
Q. When you and your husband left Los Angeles after that, where did you go?
A. We went to Oregon right after that.
Q. How long were you gone?
A. We came back the latter part of October.
530 Q. Then how long did you stay at home in California?
A. A week or ten days.
Q. How long, where did you go then?
A. We came here to Oklahoma.
Q. How long did you stay here?
A. Until in the spring.
Q. Then where did you go?
A. To Los Angeles.
Q. What time of the year was that?
A. The latter part of March.
Q. After you went back to Los Angeles, did you see Mr. Heiser?
A. No, sir.
Q. Or Mr. Smith?
A. Yes, sir.
Q. Where did you see him?
A. At his place of business.
Q. How did you happen to go down there?
A. We went down there several times trying to see him.
Q. Who did?
A. My husband and myself.
Q. And what did you find there?
A. Well, we found a lot of this stuff had disappeared.
Q. Were you familiar with the stock?
A. Yes, I had seen a lot of it.
Q. Could you tell the stock was missing?
A. Yes, sir.
Q. Did you discuss that with anyone at the time?
A. Yes, with Mr. Smith's sister.
Q. Who was that?
531 A. Mrs. Buck.
Q. What did she claim to have done with it?
A. She stayed in the store all the time.

Q. What did she tell you though about the stock?

A. Said she was sorry about Calvin, said they would lose all their stock and she said she wished Mr. Woodruff would do something to protect the mortgage.

Q. Why did she tell you that, do you know why she told you that?

A. Well, she said Heiser had not lived up to his purported contract.

By Mr. Turnbull: We object to that, if the Court please.

By the Court: Sustained.

By Mr. Fischl:

Q. Now Mrs. Woodruff, you remember an occasion when certain materials, sacks were taken out of your home and when it was placed in your home?

A. I don't remember the exact date.

Q. You remember it being placed there?

A. Yes, sir.

Q. You know how much that was, how much material?

A. A large amount, I think around thirty-five or thirty-six sacks.

Q. When it was put in the home where was it placed?

A. In a small room.

Q. How long did it remain there?

A. Until Mr. Heiser swore out a complaint against Mr. Woodruff that he had disposed of it and we had to take it to the District Attorney's office.

Q. When was that?

A. In 1932.

532 Q. Where was Mr. Woodruff at the time?

A. In the hospital.

Q. Did you have anything to do with taking it down there?

A. Yes, sir.

Q. What was that?

A. I got a truck and had three men put it on the truck and my son and I followed it down there and met Mr. Cobb and Mr. Hornsby there.

Q. Who was Mr. Cobb and Mr. Hornsby?

A. Mr. Smith's attorneys.

Q. What did you do down there?

A. Went to the District Attorney's office.

Q. Was Mr. Heiser there?

A. Yes, sir, and the District Attorney said Mr. Heiser had out a complaint that Mr. Woodruff had sold the stones and I told him they were brought there after a Sheriff's sale and I told them Mr. Woodruff wanted the Court to take them and put them some place and keep them until the dispute was over.

Q. Then what was done?

A. The District Attorney said for Mr. Heiser to examine the stones and Mr. Cobb and Mr. Hornsby went to the truck.

Q. Were you there?

A. Yes, sir, and my son Howard and Mr. Heiser got up on the truck and put his hands in the bottom and turned them over and over and I asked him if it was all there and I told him that there was one sack that sold that we did not get, it would not be there, and after he examined them all, I said, "Are those the ones you claimed"? And he said, "These are the stones all right," and I said, "Are they all there?" And he said, "Yes, they are all there," he said, "I could not be sure as to the weight," and I said, "We will take it down and weigh them then", and Mr. Heiser got on the truck and went to the storage company.

533

Q. Who did?

A. One of the attorneys, it might have been Mr. Cobb and Howard and I and the truck driver.

Q. What warehouse was that?

A. Foleys, I believe.

Q. Where was it located, do you remember?

A. Seems like it was on South San Pedro.

Q. What took place there?

A. As they brought each sack in Mr. Heiser examined them again and made a thorough examination and he said there was really more there than he thought there should be, and I said, "You see this is your stuff and it is all here", and he said he was perfectly satisfied.

Q. Then what happened?

A. They took it in the storage room and turned the key over to the storage company.

Q. Was it ever in your home after that time?

A. No, sir.
Q. Any of it taken out since then?
A. Not to my knowledge.
Q. Or were any taken out in your home?
A. No, sir.
Q. The same stuff was put in the Foley Warehouse, that was the same stuff that was put in your home?
A. It was.
Q. And all of the would be sapphires, stones and so forth that were brought to your home were placed in the Foley Warehouse?
A. Yes, sir.

By Mr. Fischl: That is all.

Cross Examination.

534 By Mr. Turnbull:

Q. Who put it in the warehouse that day, was it put in in the name of Cobb?
A. Yes.
Q. Mr. Cobb was there when it was put in the warehouse?
A. He signed the papers.
Q. You present when the depositions were taken at Mr. Cobb's office?
A. No, I was not.
Q. Don't you know he testified as shown by the deposition on that occasion that Mr. Heiser said all of his stuff was not there?
A. I was not there when Mr. Cobb testified, I never met Mr. Cobb while I was in Los Angeles.

By Mr. Turnbull: That is all.

Witness excused.

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535 HERMAN WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.

A. Herman Woodruff.
Q. Where do you live, Mr. Woodruff?
A. Northwest of Healdton.
Q. In Carter County, Oklahoma?
A. Yes, sir.
Q. Are you a brother of Leonard Woodruff?
A. Yes, sir.
Q. Were you in California in July and August of 1958?
A. Yes, sir.
Q. What were you doing out there if you remember?
A. My mother and I had some business on matters concerning my father's estate.
Q. When did you go out there?
A. I think in July, I was there through August.
Q. Do you know M. E. Heiser?
A. Yes, sir.
Q. And Calvin Smith?
A. Yes, sir.
Q. Did you see them while you were out there?
A. Numbers of times.
Q. Where did you see them?
A. They would come to my brother's store and the antique place and my brother's residence.
Q. How many times would you say you saw them?
536 A. Four or five times a week.
Q. Did you hear any conversation between them and your brother?
A. Yes, sir.
Q. You were there and participated in some of those conversations?
A. Yes, sir.
Q. What about?

By Mr. Turnbull: We object to that, the same objection to this witness' testimony as made to others on the ground it is an attempt to collaterally attack a judgment that is a final judgment, and I presume this witness' testimony will go to the same facts and circumstances as testified by other witnesses, which is to a proposition that cannot be legally raised against this judgment.

By the Court: Proceed, overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. What was the conversation about?

A. Well my brother had had dealings with Smith loaning him money and Mr. Heiser brought up the mines and wanted my brother to go and furnish the cash to open the mines.

Q. Was any agreement reached regarding that in any conversation you heard?

A. My brother advised Smith, he had first advanced Smith some money and advanced him $10,000.00 more and Smith said if he could open this store or open up a store, something about it and handle this stuff that Heiser
537 had he could make a lot of money.

Q. What was that?

A. Well, some stones he was going to ship down and have Smith re-cut and put on the market and he said they were worth a large sum of money, and said he had the corner on that kind of business, and Smith and he would organize a new company and would have a lot of money right away, and through that manner Smith figured he could pay my brother.

Q. Had they already organized the Company?

A. Well they said they had it in the making between Heiser and Smith, I don't know if a Company was then organized or not.

Q. Was anything said about the value of this stuff, these stones and things that Heiser had?

A. Well he said it was very valuable, he put a value on it of forty thousand dollars, forty to fifty thousand dollars, and they were uncut then.

Q. And he was to ship them to Smith?

A. Yes, sir, he wanted to put it in my brother's possession and he would not accept it.

Q. What did Heiser say about that?

A. Well he insisted on that.

Q. What did he say?

A. He said he would send it down to Smith and wanted my brother to be in the new company and be a Director or President and he refused to do that, and refused to go into the Company or accept the rocks.

Q. Was any further agreement made there to which you were a party or present?

538 A. One time Heiser had no car and Smith did and he would bring Heiser up. At one time, in the plans, we met several times and discussed it and a man by the name of Gene came in there and Heiser insulted him and it looked like Gene would throw him out, and McClosky said he had things you could see, he said you could see what he was buying and Heiser suggested that Leonard go and see the mines, and my brother said he was not able, he was practically in bed at that time, and Heiser said or suggested that he go and when he said he couldn't he suggested that you send your brother from Oklahoma here, he said he knows shovels and dredges and things of that kind, and he suggested that I go over there and go in the mining business, he said I would make more money than I could drilling wells, he said wells in Oklahoma, and my brother said he would not do anything about it, if I agreed to go and would take three or four months to make the trip he would wait until I came back before he advanced Smith any more money, he said it would all depend on my report.

Q. Did you agree to go?

A. Yes, sir, and we were going to leave within two or three weeks. Heiser wanted to leave right away and I said I had some business here to settle up, and in two weeks I will be ready, that was the last time I ever saw Heiser, and I stayed two weeks longer and Heiser never showed up any more, I don't remember if I saw Smith again or not, I know I never saw him over once, he never came to the house for there were several boys around the store asking where Smith was.

539 Q. And Heiser agreed he would be back in two or three weeks ready to go?

A. Yes, sir, he said his family lived there and he was going to ship the rocks down there to Smith and Smith would start re-cutting them so he could have money coming in to this Company.

Q. What did he say about going to Australia?

A. Well, we agreed to meet there and go.

Q. He agreed to come back to Los Angeles?

A. Yes, sir.

Q. And you waited for him?

A. Yes, sir, waited longer than that time and he never showed up.

Q. And you have never seen him since?

A. In Court, yes, sir, in 1939, the first time I saw him after that.

Q. Did he ever get in contact with you after that?

A. No, he never did.

Q. What did you do after you waited around and he never did show up?

A. I waited a week or ten days after he had agreed to show up and came on back to Oklahoma.

Q. What did he have with him that he was trying to sell at that time?

A. He had some rocks that were not polished?

Q. Anything else?

A. A few diamonds. He said they would be diamonds in Australia, some kind of stone.

Q. Did he have any animals?

A. Well, he had a teddy bear he said he was selling to the actors and tried to sell me one. He sold one actress one, for $750.00. They were two or three feet long, he called them teddy bears.

540 By Mr. Fischl: That is all.

Cross Examination.

By Mr. Turnbull:

Q. You saw Mr. Heiser when he testified in 1939 in the case of Heiser vs. Woodruff?

A. In the Federal Court, yes.

Q. You did not testify?

A. No.

Q. You are a creditor with a claim for fourteen thousand dollars in this same estate, in this Woodruff estate?

A. Yes, sir.

By Mr. Turnbull: That is all.

Witness excused.

By Mr. Fischl: I would like to inquire of Mr. Turnbull if the claimant Mr. Heiser is here.

By Mr. Turnbull: No, he is not here, his deposition is here and I thought it had been offered.

By Mr. Fischl: Is the claimant Heiser in the State of Oklahoma?

By Mr. Turnbull: If he is in the State of Oklahoma I do not know it. My information he was on August 26th, 27th, 28th, when his deposition was taken in the matter, the original of which is now before your Honor.

541 By Mr. Fischl: For the purpose of impeachment we offer in evidence the deposition of M. E. Heiser.

By the Court: Very well.

H. D. McCollom, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.
A. H. D. McCollom.
Q. Where do you live?
A. In Ardmore.
Q. How long have you lived here?
A. Thirty-five years.
Q. What is your business?
A. I am an accountant.
Q. Mr. McCollom, with what bank have you been connected?
A. The First National Bank.
Q. You ever had experience in comparing signatures to determine if they were genuine?
A. Yes, sir.
Q. How long have you been engaged in that work?
A. Fourteen years and in the banking business I studied handwriting all my life.

542 Q. How many times have you testified in handwriting cases?
A. Several hundred times.
Q. Mr. McCollom, I hand you the proof of unsecured debt filed here by the claimant Heiser, and the supplemental proof of claim of M. E. Heiser filed in August of 1940. I show you the proof of unsecured debt of M. E. Heiser sworn

to before a Notary Public and the letter of the attorney on the back sworn to and the two signatures of M. E. Heiser at the end of the supplemental claim, have you examined those signatures?

A. I have.

Q. I show you the Debtor's Exhibit "3" to the deposition of M. E. Heiser, which has the signature of M. E. Heiser at the end of it, have you compared that signature with the ones on the claim?

A. Yes, sir.

Q. The signatures on the claim the same as the signature to the deposition?

By Mr. Turnbull: We object to this on the ground we are taken absolutely by legal surprise, no claim that the claim or supplemental claim was not signed by M. E. Heiser, we had no opportunity until this minute to be informed as to this and over a year has expired since the claim was made, and we are entitled to know that Paul Joseph, who placed his seal thereon was not telling the truth. The claim was made at the last minute since we have been here over a period of years and there has never been a question
543 as to his signature, that has never been raised, we are taken by actual surprise. This is the first time we had any information that this Notary had falsified his signature and seal. If they are claiming that we are entitled to know it instead of waiting until the last witness and until this witness was called I had no idea such a claim was made, and we are now at a loss to understand it, and we could not refute it unless we rest on the plain signature of the Notary.

By Mr. Fischl: The purpose of this testimony is just exactly the opposite to what his inference leads him to believe. We say the signatures on the claim are genuine signatures, we think they are and we are introducing them for the purpose of proving the other signatures are genuine, that is the only purpose and there are attached to this deposition some twelve or fourteen instruments signed by Heiser.

By Mr. Turnbull: I thought he had another idea, if he is trying to use these signatures as genuine signatures, I

am wrong. Then you are not making an attack on the claim for the reason it was not signed by Heiser?

544 By Mr. Fischl: We are using that as a genuine signature.

By Mr. Turnbull: I will withdraw the objection.

By Mr. Fischl:

Q. Mr. McCollom, I show you the signature of M. E. Heiser on the original claim and the supplemental claim and also on the back of Debtor's Exhibit "6", which comprises five different certificates of stock, I will ask you if those signatures subscribed to those different certificates of stock are the same signatures as the one who signed this claim and supplemental claim.

A. Yes, sir.

Q. I show you the signature of M. E. Heiser to this instrument, is that the same as the one who signed the claim, the genuine signature here?

A. Yes, sir.

Q. The signature to Objector's Exhibit "10", I will ask you if that signature is the same or was made by the same individual who signed this claim in this case?

A. Yes, sir.

Q. And the signature to Exhibit "11", is that the same, the same man sign it who signed this claim?

A. Yes, sir.

Q. You have examined all the signatures?

A. Yes, sir.

Q. Exhibit "12", is that the signature of the man who signed this claim and supplemental claim?

A. Yes, sir.

Q. You have compared them all?

A. Yes, sir.

Q. And Exhibit "13", is that a genuine signature of M. E. Heiser?

A. Yes, sir.

545 By Mr. Fischl: If the Court please, we offer all the depositions and these exhibits attached to the depositions in evidence.

By Mr. Turnbull: It being in documentary form I think you should offer it. Do you offer the deposition?

By Mr. Fischl: For the purpose of impeachment I offer the deposition of M. E. Heiser and the documents attached thereto.

By the Court: All right, let them go in.

By Mr. Fischl: Let the record show Mr. P. M. Jackson, the Trustee is here and Mr. Turnbull is anxious to conclude this hearing today if possible. We have here in Ardmore the material which was stored in the Colyear Van and Storage Company in Los Angeles which has been brought here by the Trustee under the direction of this Court, and we ask the Court to examine it. In the first place, and in the second place we want to ask the Court to direct the Trustee to have it examined by experts and appraised and in the third place we received from a New York concern a request for samples of this material for the purpose of determining whether or not they desired to buy it. The claimant M. E. Heiser testified in the hearing before Judge Cosgrove, this material had more value during war time
546 than any other time and if it has any particular value at this time we think it is the duty of the Trustee to report that back to the Court, and if it is needed for some war purpose we think it should be available for that purpose, and we offer the copies of the letters of M. E. Poppolow of New York City, and we want to ask the Court to direct the Trustee to send samples of this material up there for the purpose of having it examined.

By Mr. Turnbull: You are offering the correspondence between you and the man in New York?

By Mr. Fischl: No, I am not offering it

By Mr. Turnbull: Over a year ago I told Trustee's counsel the value of this property was of a greater value then than any other time and at that time they could get a good price for it and suggested to him that the property be put on the market and if it went into the manufacture of synthetic bearings they might get a good price for it, and the best price we could get was some ten or fifteen

thousand dollars, at that time they could have disposed of this property.

By the Court: On the sale of any property like that, that is a matter for the Trustee to look into and file an application for authority to sell it and I will give notice to the creditors.

547 By Mr. Fischl: In response to counsel's statement I offer in evidence a telegram I got from him in September, 1941, as part of the objection to the claim.

By Mr. Turnbull: Counsel has stated to me that he was not offering that except in the general administration of the estate, and now he says he is going into the objection to the claim. He is now trying to make it appear that this is the same property that Heiser had in his hands originally, and all the property that he then had. My idea is to aid the administration of the estate and when I aiding the Trustee, which I intend to do, I am assisting in the general administration of the estate.

By the Court: The point is as to the value of the property at that time.

By Mr. Fischl: That is true. One of Mr. Heiser's witnesses said it was worth seventy-five or eighty thousand dollars.

By Mr. Turnbull: Yes, and much of this stuff was taken out of those sacks too.

By the Court: You can show the value of the material in the hands of the Trustee at this time. Of course you would have to show what the same class of material was worth ten years ago.

By Mr. Turnbull: I think this identical property is worth more than it was ten years ago.

548 By Mr. Fischl: This is not property that the value can be proven readily by everyone, but we have this inquiry and the Trustee can determine the value of it and also get some appraisers to come to Ardmore and examine this stuff.

By Mr. Turnbull: We have taken the depositions of people who have examined it and I thought that was sufficient.

P. M. JACKSON, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. Your name is P. M. Jackson?
A. It is.
Q. You are the Trustee in this case?
A. Yes, sir.
Q. Were you present in Court at Purcell when Judge Clark made an order for you to remove this material to Ardmore?
A. Yes, sir.
Q. Did you proceed to send out there after it?
A. Yes, sir.
Q. Is that material now in Ardmore?
A. Yes, sir.
Q. When did it reach Ardmore?
A. Yesterday.
549 Q. The 26th of July?
A. Yes, sir.
Q. Did you get it here as quickly as you could under the circumstances?
A. I think I did.

By Mr. Fischl: Now we ask the Court for an order appointing appraisers to appraise this property and copies of the appraisement to be furnished opposing counsel and interrogatories to be propounded to the witness if counsel so desires, and we desire to make it then a part of our objections to this claim.

By Mr. Turnbull: For the purpose of the general administration of the estate I have no objection but for the purpose of making any evidence in this case competent against the claim of my client in this case would be incompetent in my opinion. In other words, my position is that

that is a final and binding judgment and any evidence adduced here would be incompetent for the purpose of collaterally attacking it, on the question of value I don't think the appraisement or the appraiser's report would be evidence, you would have to have the expert here or his testimony in the form of deposition, for that reason, except for the purpose of sale, I don't see where that would be beneficial.

550 By Mr. Fischl: Unless we reduce it to interrogatories. I thought the Court would be better satisfied in view of the fact there was so much discrepancy in the value in the testimony before Judge Cosgrove.

By Mr. Turnbull: We further object to the Court appointing appraisers to fix a value on this material on the ground that for the Court to select appraisers to give evidence before the Court would be contrary to law. The issue as to the value has been tried heretofore and determined and this Court is without jurisdiction now to select local appraisers to try that matter which has heretofore been tried and is therefore, so far as this Court is concerned, a settled matter.

By the Court: If I should appoint appraisers and they go out and appraise this property and make a report of their appraisement that would not be evidence that I could consider in this matter.

By Mr. Fischl: That is true.

By the Court: Therefore what is the use of doing that.

By Mr. Fischl: We will take the depositions of these witnesses.

By the Court: Under my former holding you are entitled to subpoena them in or take their deposition as to the value of this material, but I don't see any use, until the Trustee gets ready to sell it, to have it appraised, I can't see
551 any reason to appoint appraisers for the purpose of this hearing at all. On the question of whether you want to continue this hearing to take depositions on that point, I might consider that later on.

By Mr. Fischl: We offer in evidence as our Exhibit

"XX" the testimony of the claimant M. E. Heiser appearing at Pages 11 to 44 and 148 to 151 of the Reporter's Transcript of proceedings In Re: Objection to claim of M. E. Heiser, No. 13,393-J before Hon. Earl E. Moss, Referee, which was taken on Wednesday, April 14th, 1932, and Friday, April 22nd, 1932.

By Mr. Turnbull: We make the same general objection that the evidence is incompetent, irrelevant and immaterial and cannot in any way affect a valid and binding judgment.

By the Court: Overruled.

By Mr. Fischl: This morning we introduced as our Exhibit "AA" the Clerk's minutes made on March 20th, 1939, which we now make as part of our objection to this claim.

By Mr. Turnbull: I think I made my objection at the time you offered the exhibit.

By Mr. Fischl: Yes, sir, I believe so. We offer as our Exhibit "OO" a certified copy of part of the deposition of M. E. Heiser given in the case of Morris Heiser, plaintiff, vs. Maudie Jane Graves, No. 238,348, in the Superior Court of the State of California in and for the City and
552 County of San Francisco, also a certified copy of the first amended complaint in that case and a certified copy of the amendment to answer to first amended complaint.

By Mr. Turnbull: All after the transaction of the subject matter in our case and it is immaterial to any issue in this case, and is a further attempt to collaterally attack the final judgment and has nothing to do with this matter. This action was filed in 1934 against someone else, somewhere else, and is in violation of the rule of full faith and credit that should be given to the judgment of a Court of competent jurisdiction.

By Mr. Fischl: It is for the purpose of impeachment only and the pleadings are to show what the testimony was about.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Fischl: We offer in evidence as our Exhibit "PP" a certified copy of a petition accompanying application to sell and issue stock and a letter addressed to the Commissioners of the Corporation from International Gems dated October 16th, 1937, withdrawing said application. This exhibit is offered for the purpose only of identifying
353 the next exhibit, which is a transcript of testimony of Heiser in which the Exhibit "PP" forms the basis.

By Mr. Turnbull: We object to it on the ground that the application appears for the purpose of issuing stock in June of 1937 and is an attempt to impeach a final judgment.

By the Court: Overruled.

By Mr. Fischl: We offer in evidence as our Exhibit "RR" the testimony of M. E. Heiser appearing at Pages 122, 196, 205, 224, 230 and 261. It begins on those pages and continues over for some pages thereafter. In the transcript in the matter of the investigation and examination of International Gems before the Department of Investment Division of Corporations in the State of California, it is part of a deposition and hearing reported by Claire E. Cone.

By Mr. Turnbull: You are not offering that part of the testimony given by other witnesses?

By Mr. Fischl: Only the Heiser testimony shown therein. And we offer Pages 109, 110 and 111, 112 and 113 in evidence.

By Mr. Turnbull: If the Court please, we object to it on the grounds heretofore stated.

By the Court: Overruled.

By Mr. Turnbull: Exception.

554 By Mr. Fischl: Now if the Court please, we offer in evidence in support of our objection against the claim of Heiser, all the testimony of M. E. Heiser appearing in the transcript in the case before Judge Cosgrove on the question of the value of the supposed gems which has heretofore been identified as Objector's Exhibit "DD." That is our Exhibit "2," if the Court please. Now we offer in evidence as our Exhibit "SS" a certified copy of the Ar-

ticles of Incorporation of the Golden State Gem Company of Nevada. As our Exhibit "TT," we offer in evidence the certified copy of the application of the Golden State Gem Company of Nevada for permission to do business in the State of California as a corporation. We offer in evidence as our Exhibit "UU" a duly certified copy of summary of capital and shares of the Heiser Burmah Sapphires Limited, properly certified to on the 9th day of May, 1941. If the Court please, we offer in evidence our Exhibit "VV," the third page of the exhibit is an affidavit for subpoena duces tecum and then further over in the instrument Notice of Hearing Application to Review Referee's Order, further on over there is an order fixing date for hearing objec-
555 tion to claim of M. E. Heiser and then the judgment of dismissal and the notice to produce, the affidavit for two subpoenas duces tecum, the notice of hearing on objection to claim of M. E. Heiser, objection to claim of M. E. Heiser and a list of the creditors of the Golden State Gem Company, and a letter which is the third to the last page of this exhibit from the law office of McFarland and Beveridge, Los Angeles, California, to Hon. Earl E. Moss, Referee in Bankruptcy, Los Angeles, California. We then offer in evidence as our Exhibit "WW," certificate of the clerk in the United States District Court for the Southern District of California, Central Division, and it says, "Certificate In Re: Claim of M. E. Heiser." We offer in evidence three letters from D. B. Edwards, Executive of the Department of Commerce of Australia in which he recites he was the executive together with the transmittals which are attached to the exhibit, as Exhibit XX.

By Mr. Turnbull: We object to that, if the Court please as the rankest hearsay, further on the ground it is an attempt to show a state of facts contrary to that found by the United States District Court for the State of California in the case of Heiser vs. Woodruff.

556 By the Court: I can't see where that would be competent in evidence. Objection sustained.

By Mr. Fischl: We would like to ask permission to get this information by written interrogatories, I don't know if we can or not, however we tender these letters in evi-

dence. We offer in evidence as our Exhibit "YY" the complaint for injunctive relief and to prevent multiplicity of suits filed in the District Court of the United States for the Southern District of Oklahoma in the case of M. E. Heiser vs. Willie May Woodruff, et al., filed December 30th, 1940, and is 426 Civil. We offer not only the complaint but the temporary injunction, separate answer of the defendant, Leonard J. Woodruff, findings of fact and conclusions of law.

By Mr. Turnbull: We object to that on the ground the finding in that case and the judgment in that case expressly holds that the Court is not determining any issue that was now pending in this Court in the matter of the objection to these claims. He was not enjoining the parties but leaves your Honor to determine the matter as you find it on the law and the facts.

By the Court: That is the record made on the injunction suit.

557 By Mr. Fischl: We don't claim the judgment has any effect here at all only to show the conduct of the parties.

By the Court: The objection is sustained as to that.

By Mr. Fischl: We tender it as part of the record in this case.

We offer in evidence the deposition of Louis Oreck appearing in the depositions reported by C. W. McClain and H. A. Dewing in the matter of Leonard J. Woodruff, Bankrupt, In Bankruptcy No. 7623, and appears on Pages 100 to 112 inclusive of that deposition. That is offered as our Exhibit "ZZ". we offer in evidence the deposition of Irving Oreck given before Judge Cosgrove which is part of deposition "DD." We now offer in evidence the deposition of D. K. Stern. Also the deposition of Jefferson J. Graves taken August 29th, 1941, the deposition of D. K. Stern being taken August 28th, 1941, and also the deposition of E. A. Lobree taken October 7th, 1941. We also offer the deposition of J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt and Norman R. Dunn.

By Mr. Turnbull: To which the defendant Heiser objects on the ground it doesn't tend to prove any matter in this case and is an attempt to collaterally attack a valid and binding judgment rendered by a Court of competent jurisdiction and also as shown by our objections heretofore made to this character of testimony.

By the Court: Very well, overruled.

By Mr. Fischl: We would like to inquire of Mr. Turnbull if he would admit his client has never been present at any proceeding in this case in any of the counties of Oklahoma in person.

By Mr. Turnbull: He testified in person in the California Courts on the original case and the subsequent hearings and he appeared by counsel in Oklahoma but not in person.

By Mr. Fischl: Very well. Will counsel stipulate there was a hearing in this Court on the 11th day of August, 1939, on the motion of the claimant M. E. Heiser to dismiss for want of jurisdiction?

By Mr. Turnbull: As shown by the record there was such a proceeding.

By Mr. Fischl: Will counsel stipulate there was a hearing in this Court on the 26th day of August, 1940, on the petition for arrangements.

By Mr. Turnbull: There was no such hearing that I know of.

By Mr. Fischl: We offer in evidence a copy of the record of August 26th, 1940, in this case, a copy of the record in this proceeding. Counsel surely will stipulate that the matter was set for hearing on the various claims on November 15th, 1940, in this Court at this Court House and hearings were had on various claims from November 15th to November 27th, 1940.

By Mr. Turnbull: On November 18th a meeting was called by the Referee, Hon. George Clark, and thereafter a meeting was held on November 18th and adjourned to the 26th, and on the 27th it was adjourned to January 20th, 1941.

and thereafter adjourned until today, I will stipulate as recited.

By Mr. Fischl: Now in this connection this injunction suit should go in. We offer the complaint in the injunction case filed by Heiser December 30th, 1940, the temporary injunction issued January 4, 1941, the judgment of the Court on August 18th after a trial at Ada. There was a hearing in this injunction suit before Judge Rice and a hearing at Ada in March of 1941.

By Mr. Turnbull: Wherein the Court said he would not find on its merits.

By Mr. Fischl: There was a trial.

By Mr. Turnbull: We object to it on the ground it has nothing to do with this case.

By Mr. Fischl: The purpose is to show the various hearings had in this proceeding in this State in which counsel stipulates his client never appeared in any of them.

By the Court: I can't see any reason to incumber the record.

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560 LEONARD WOODRUFF, recalled, having been duly sworn as required by law, testified as follows:

Further Direct Examination.

By Mr. Fischl:

Q. Were you present in Los Angeles part of the time in taking the depositions on August 8th and 9th of 1942?

A. Yes, sir.

Q. At Mr. Casey's office and also at the Warehouse?

A. Down at the Warehouse.

Q. And Mr. Casey's office too?

A. I was only there one day.

Q. At that time in the taking of the deposition did you see Mr. Heiser?

A. No, sir.

Q. Was he present as far as you know?

A. No.

By Mr. Fischl: That is all.

Witness excused.

By Mr. Fischl: We rest except with reference to the examination of these gems and this deposition in Australia, if I can get that, otherwise we rest.

By Mr. Turnbull: We would like to cross examine Calvin Smith before you close.

By Mr. Fischl: He is not here.

By Mr. Turnbull: My name is Turnbull; I am one of the attorneys for the claimant, M. E. Heiser; on the last occasion we were here Calvin Smith, a witness, was produced
561 and examined and I announced I desire to cross examine him as shown by the transcript of proceedings and counsel said he would produce him for cross examination thereafter. Afterwards he gave me notice he would take the deposition of Calvin Smith on the 8th and 9th days of July, 1942. I sat in on that deposition and he was not produced on either days. At the time I was here and decided to cross examine Smith I had in my possession the testimony of Smith given in the case of Heiser vs. Graves, No. 238,348, being the same action in which the objectors have now filed a transcript of the pleadings in that action. By that transcript I was prepared then as now to show the exact testimony of Smith. That none of these gems shipped to the bank at Los Angeles had never been transferred to the Golden State of California and I had no opportunity to cross examine Mr. Smith as to that. If the Court please, this notice does not show he served me with notice to take the deposition of Smith and I was wrong about that, I discussed that matter with my co-counsel and I thought he did, that is wrong and in view of their not producing him
562 for cross examination I thought they served me with that notice. In view of their not producing him for cross examination I desire to offer the testimony of Mr. Smith in the case of Heiser vs. Graves which I have in my hand. He promised to return and he never did. I was assured by counsel he would be back in order that I might

cross examine him. I have this record here and now offer it in evidence.

By Mr. Fischl: In opposition to the statement of counsel I desire to say that I am one of counsel for objectors. When adjournment was had in this Court on the 27th day of November, 1940, by agreement until January 20th, 1941, objectors agreed to produce Smith as a witness for the purpose of cross examination on the hearing on January 20th, 1941. Thereafter and at a time when the witness was in Los Angeles, California, and present at the place where the depositions were taken the plaintiff took the deposition of Smith on Monday, December 23rd, 1940, in the case of Heiser vs. Woodruff in the United States District Court for the Southern District of California and the deposition was taken in the office of Meyberg & Meyberg, attorneys for the claimant Heiser, and he invited me to be present at
563 the taking of the deposition and I proceeded to the place where the depositions were to be taken and I was ordered out of the office and I afterwards secured a copy of the deposition taken by the Reporter and I have a copy of the deposition in my possession now.

By Mr. Turnbull: That is in another case.

By Mr. Fischl: Thereafter the objectors served notice upon the claimant Heiser and his attorney that they would take the deposition of Smith on the 6th day of January, 1941, in the city of Los Angeles, California, and on the 30th day of December, 1940, and after the service of that notice the claimant Heiser filed in the Eastern District of Oklahoma a civil action to enjoin the taking of the deposition and the further proceedings on his claim in this Court, and on January 2nd, 1941, the Court issued a temporary injunction enjoining the taking of the deposition and ordered the deposition of the witness at that time, and we think under those circumstances that relieves us from any liability in not producing the witness Smith.

By Mr. Turnbull: Mr. Fischl, do you say the deposition of Smith was taken in 7256-C in Southern California?

A. Yes, sir.

564 Q. In that action 7256-C you were not an attorney of record in California?

A. No, sir.

Q. You were not admitted to the Bar of the Circuit Court of the Southern District of California at the time?

A. No, sir.

Q. That deposition was taken in a case other than this case in this Court?

A. Upon which the claim of Heiser is based in this case.

Q. A case in which at the time of the taking of this deposition I was not present?

A. No, I don't think you were, you were back here to get the injunction.

Q. As far as you know I was not an attorney of record in that case?

A. I don't know, I am not familiar but your associates were Meyberg & Meyberg.

By Mr. Turnbull: That is all.

Witness excused.

By Mr. Turnbull: This is the testimony offered for the purpose of impeachment, I have it here and I am entitled to my day in Court. That testimony has been written up and there is a transcript of it here.

By Mr. Fischl: I might say this, I saw him on the night of the 6th or 7th of July, 1942 at his place of business near Temple Street I believe it was and inquired if he
565 could come back or would he come back and he told me at that time he had nine men in his employment and he could not possibly get away.

By Mr. Turnbull: That is true, I don't doubt that. But I am entitled to have his testimony in here and I desire to offer this testimony now for the purpose of impeachment. This was taken in 1933 before a Notary Public in the case of Morris Heiser vs. Maude Jane Graves, et al., case No. 238,348 and being the same case in which there has already been admitted some pleadings and testimony and I offer

now the testimony of Calvin Smith in lieu of my right to cross examine that witness.

By Mr. Fischl: We object to it as incompetent, irrelevant and immaterial and no proof here at all of the genuineness of this instrument given in a case in California. You would have to take the deposition of the Reporter who took it.

By the Court: They are entitled to cross examine him or have him here at the end of this hearing. You can have this identified by the Reporter.

By Mr. Fischl: In its present form?

By the Court: Maybe not in its present form.

By Mr. Turnbull: Then I move to strike the testimony of Calvin Smith given in behalf of the objector on
566 the ground that we have had no opportunity to examine that witness or impeach him or explain his testimony and that witness was to return here before this Court for the purpose of cross examination.

By the Court: He did not give a great deal of testimony, let it stand as it is.

By Mr. Turnbull: Exception. I will take the deposition of this Reporter as soon as I can give notice and offer at this time that deposition as part of the cross examination of Calvin Smith and with that we rest.

By Mr. Fischl: We are through but we would like for the Court to see this material.

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567 Immediately after the hearing herein on the 27th day of July, 1942, the Hon. Geo. Clark, Referee in Bankruptcy, together with P. M. Jackson the Trustee herein; Hon. Louis A. Fischl, Attorney at Law, T. G. Gibson, Attorney at Law, and the Court Reporter, O. E. English, went to the storage house of Tom Echols in the City of Ardmore, Oklahoma, and viewed some 35 sacks of materials, one or two sacks were opened and the contents therein were examined in part and all of said materials returned to its original container, tied up and left where found. The materials

therein appeared to be some kind of dark substance with the appearance of slate and dark colored stone or rock.

State of Oklahoma, Carter County.

Reporter's Certificate.

568 I do hereby certify that the above and foregoing transcript of the testimony in the above entitled cause is a true and correct transcript of the shorthand notes taken by me as Reporter in the trial of said cause, at Ardmore, Oklahoma, on the 27th day of August, 1942, said case being tried before Hon. George Clark, Referee in Bankruptcy, and that the testimony of the witnesses herein shown was correctly taken down by me in shorthand during the progress of said trial, and that the same is in all respects a true and correct transcript and report of the testimony of all witnesses produced upon said trial.

Witness my hand as such Reporter, this 15 day of April, 1943.

O. E. English, Court Reporter.

TRANSCRIPT OF RECORD

136

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Vol. II

TRANSCRIPT OF RECORD

(Pages 640 to 1305)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 496

M. E. HEISER, PETITIONER,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 10, 1945.

CERTIORARI GRANTED DECEMBER 17, 1945.

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELLE WOODRUFF; and LEONARD J. WOODRUFF, APPELLANTS,

vs.

M. E. HEISER, APPELLEE.

No. 3053.

WILLIE MAE WOODRUFF, APPELLANT,

vs.

M. E. HEISER, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED SEPTEMBER 5, 1944.

VOLUME II.

INDEX.

	Original	Print
Objectors' exhibits (designated portions):		
AA—Portion of judgment docket, No. 13393-J, Bankruptcy, United States District Court, Southern District of California, In Re Golden State Gem Company, and proceedings, March 20, 1939, in No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.		643

	Original	Print
BB—Depositions:		
Cobb, Francis B. (narrative statement)	573	655
Cone, Claire E. (narrative statement)	585	667
Objectors' exhibit 1—Reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems (by reference to page 1169)	. .	679
Dewing, H. A. (narrative statement)	569	661
Dewing, H. A. (narrative statement) (recalled)	578	661
Objectors' exhibit 1—Reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 987)	. .	679
Objectors' exhibit 2—Designated portions of reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 1120)	. .	680
Dunn, Norman R. (narrative statement)	583	665
Objectors' exhibits:		
1—Freight bill, Pacific Electric Railway Company, August 13, 1928, to Morrie Heiser	. .	681
2-1—Receipt for delivered freight August 16, 1928, Morrie Heiser to Pacific Electric Railway Company	. .	683
2-2 to 2-33—Checks of Golden State Gem Co.	. .	685
2-34 and 2-35—Ledger sheets showing account of Golden State Gem Co. of Nevada with United States National Bank, Los Angeles, California	. .	703
2-36 and 2-37—Summons to witness, No. 13393, Bankruptcy, United States District Court, Southern District of California, in re Golden State Gem Company	. .	707
2-38—Writ of attachment, Municipal Court, City of Los Angeles, California, Mill v. Golden State Gem Co. et al.	. .	710
Graves, Jefferson J. (narrative statement)	585	671
Objectors' exhibit 1—Letter, August 30, 1928, Morrie Heiser to James Jefferson Graves	591	673

	Original	Print
Kosto, Gean (narrative statement)	579	661
Lobree, E. A. (narrative statement)	595	677
Marlatt, Charles B. (narrative statement)	582	664
Objectors' exhibits:		
1—Colyear Van and Storage Co. checking list	. .	713
2—Warehouse receipt and contract of Colyear Van and Storage Co.	. .	715
3—Letter, June 28, 1933, Francis B. Cobb to Colyear Van and Storage Co.	. .	717
McClain, C. W. (narrative statement)	570	652
Moran, John Greble (narrative statement)	577	659
Olson, C. N. (narrative statement)	569	650
Objectors' exhibit 1—Designated portions of reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company (by reference to page 1016)	. .	717
Oreck, Louis (narrative statement)	584	666
Seelye, J. A. (narrative statement)	571	652
Objectors' exhibits 1-A and 1-B—Writ of attachment No. 246-469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Bank Co. et al.	. .	718
Objectors' exhibits 2-A to 2-C—Ledger sheets showing account of Australian American Gem Mining Company in United States National Bank, Los Angeles, California	. .	721
Stern, D. K. (narrative statement)	587	669
Woodruff, Howard L. (narrative statement)	581	662
—Deposition of M. E. Heiser (objections, arguments and colloquy omitted)	. .	727
Objectors' exhibits:		
1—Pages 30, 31 and 32 of catalog showing exhibitors in Australian Pavilion	. .	925
2—Letter, August 26, 1941, Mr. Samuels to Mr. Meyberg	. .	931
3—Letter, April 14, 1927, M. E. Heiser to Maud James Loller	. .	933
4—Original bill of lading, August 9, 1928 (by reference to page 1117)	. .	937
5—Receipt for freight delivered, August 13, 1928, Morrie Heiser to Pacific Electric Company (by reference to page 683)	. .	937
6—Five certificates of Golden State Gem Company to Morris Heiser, Nos. 10 to 14	. .	937

	Original	Print
7—Check $350.00, September 21, 1928, Golden State Gem Co. to M. E. Heiser	..	943
8—Deposit slip, July 9, 1928, $3,205.00, Australian American Gem Mining Co.	..	945
9—Signature authorization card of United States National Bank of Los Angeles, July 21, 1928	..	945
10—Letter, October 18, 1928, Morrie Heiser to Mr. Calvin Smith and Mr. Barstow (by reference to page 301)	..	947
11—Letter, October 11, 1929, M. E. Heiser to "Dear Jeff & Mr. Lequantrie"	..	947
12—Letter, November 14, 1928, Morrie Heiser to "My dear Maudie & Will"	..	948
13—Letter, October 9, 1929, M. E. Heiser to M. Le Quentrie	..	953
14—Photostatic copy of signature card of Walter Calvin Smith, August 16, 1928	..	953
15—Deposit slip of Golden State Gem Co., August 16, 1928	..	955
—Deposition of D. B. Edward	..	957
—Deposition of A. A. Staines	..	964
Entries appearing in book forming part of records of Department of Mines of the Government of Queensland	..	968
—Deposition of Leo J. Jones	..	976
Photograph of gold and gemstone display of Australian Pavilion Panama-Pacific International Exposition	..	985
CC—Reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.	..	987
DD—Certified copy of transcript of record, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (statement)	..	1013
EE—Titles of subjects discussed in certified copy of appellants' opening brief, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. M. E. Heiser	..	1014
FF—Titles of subjects discussed in certified copy of appellee's brief, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. M. E. Heiser	..	1015
GG—Titles of subjects discussed in certified copy of appellants' closing brief, No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser	..	1015

	Original	Print
HH—Certain proceedings in case No. 275003, Superior Court, Los Angeles County, California, Adolph Kosches etc. v. Golden State Gem Co.:		
Complaint		1016
Summons etc.		1018
Default judgment		1020
Affidavit for attachment		1021
II—Certain proceedings in case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al.:		
Complaint		1022
Summons etc.		1027
Default judgment (by reference to page 73)		1029
Execution		1029
Writ of attachment and returns (statement)		1030
Memorandum of costs and disbursements (excerpts)		1031
JJ—Promissory notes, $500.00, Golden State Gem Co. and Leonard Woodruff to Alphonse Jeddis Company		1031
KK—Complaint, judgment, execution and return, case No. 235037, Superior Court, Los Angeles County, California, Alphonse Jeddis et al. v. Golden State Gem Co.		1033
LL—Complaint, case No. 5587-J, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1040
MM—Order re motion to vacate judgment, case No. 5587-J, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1043
NN—Reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company, April 14, 1932, and April 22, 1932		1046
OO—Deposition of M. E. Heiser, amended answer, and judgment, case No. 238348, Superior Court, San Francisco County, California, Heiser v. Graves		1075
PP—Application for leave to sell and issue stock etc. in re International Gems before Commissioner of Corporations, State of California		1108
QQ—Notice of unsecured property taxes etc.		1113
RR—Reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al.		1120

	Original	Print
RR-2—Reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems		1169
SS—Articles of incorporation of Golden State Gem Company of Nevada		1174
TT—Designation of representative in the State of California upon whom process against Golden State Gem Company of Nevada may be served		1184
UU—Excerpt from list of persons holding shares in Heiser Burmah Sapphires, Limited		1185
VV—Order fixing date for hearing of objections to claim of M. E. Heiser etc., case No. 13393-J, United States District Court, Southern District of California, In the Matter of Golden State Gem Company, bankrupt		1187
WW—Certificate in re claim of M. E. Heiser, case No. 13393-J, United States District Court, Southern District of California, In the Matter of Golden State Gem Company, bankrupt		1189
YY—Certain proceedings in case No. 7426, Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.:		1190
Complaint for injunctive relief		1190
Exhibits:		
1—Application of creditors for order directing trustee to attack judgment, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 20)		1206
2—Application of trustee for authority to employ counsel etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 21)		1207
3—Order directing trustee to institute legal action etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 28)		1207
4—Opinion, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser (by reference to page 291)		1207
Affidavit of Leonard J. Meyberg in support of application for temporary restraining order		1207

	Original	Print
Answer of Leonard J. Woodruff		1211
Exhibit A—Order staying bankruptcy proceedings, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt (by reference to page 29)		1224
Exhibit B—Motion of Leonard Woodruff to set aside default and default judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 220)		1224
Exhibit C—Objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser (by reference to page 77)		1224
Exhibits:		
A—Judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 10)		1224
B—Complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 45)		1224
C—Order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. (by reference to page 70)		1224
D—Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al. (by reference to page 73)		1224
E—Certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. (by reference to page 69)		1224
Exhibit D—Stipulation re taking of depositions etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt		1225
Exhibit E—Letter, December 5, 1940, Champion & Fischl to Rupert B. Turnbull		1226
Exhibit F—Telegram, December 6, 1940, Turnbull to Champion & Fischl		1227

	Original	Print
Temporary injunction, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1227
Findings of fact and conclusions of law, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1230
Judgment, case No. 426-Civil, United States District Court, Eastern District of Oklahoma, Heiser v. Woodruff et al.		1236
Clerk's certificate	601	1237

[OBJECTORS' EXHIBITS AA to YY.]

[Objectors' Exhibit AA.]

In the District Court of the United States for the Southern District of California, Southern Division. In Bankruptcy No. 13393-J.

In the Matter of Golden State Gem Company, a corporation, Bankrupt.

Judgment Docket.

The undersigned, Referee herein, herewith transmits to the Clerk of said Court a list of Claims proved against said estate, together with the names and addresses of the proving creditors, as follows, to-wit:

Claimant	Filed	Allowed	Amount	Attorney
M. E. Heiser by E. A. Lobree, his attorney-in-fact	Feb-20-30	Disallowed	30,250.00	F. A. McFarland /&/R. L. Beveridge

EARL E. MOSS,
Referee in Bankruptcy.

Heiser v. Woodruff, No. 7256-C. Plaintiffs Exhibit No. 7, filed 6/27, 1939. By Cross, Deputy Clerk.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., Defendants. No. 7256-C Law.

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming before the Court for hearing on motion of defendant Walter Calvin Smith to dismiss because of

want of prosecution through inexcusable delay in service of summons, pursuant to notice filed March 10th, 1939; Leonard J. Meyberg, Esq., appearing as counsel for the plaintiff and Robert L. Beveridge, Esq., appearing as counsel for the defendant Walter Calvin Smith, and Attorney Robert L. Beveridge, having informed the Court that he does not wish to submit to the jurisdiction of the Court at this time, and Leonard J. Meyberg, Esq., having made a statement to the Court, it is by the Court ordered that the above motion stand submitted on points and authorities to be filed by both sides simultaneously by March 22nd, 1939; and, the default of defendant Leonard Woodruff having heretofore been entered, and this cause now coming before the Court for hearing on entry of judgment against Leonard Woodruff only, Morris Emanuel Heiser, plaintiff, at 10:25 o'clock A.M., is called and sworn and testifies on direct examination conducted by Leonard J. Meyberg, Esq., and having been examined by the Court, Leonard J. Meyberg, Esq., asks for judgment favor of plaintiff for $164,000.00 with interest at 7% from May 13th, 1929, against Leonard Woodruff and waives exemplary damages; and thereupon it is by the Court so ordered and Leonard J. Meyberg, Esq., is instructed to prepare judgment for signature of the Court.

[Objectors' Exhibit BB.]

569 C. N. Olson, a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live at Los Angeles and have been a Court Reporter for twenty-three years. I have reported for the Railroad Commission of California, the Superior Courts of Los Angeles County, the Municipal Courts of Los Angeles City; Earl Moss, referee in bankruptcy, and have been official Court Reporter for Ernest E. Utley, referee in bankruptcy since 1938. Objectors' exhibit one to the deposition of C. N. Olson is a transcript which I prepared of the proceedings in re objection to the claim of M. E. Heiser in the matter of Golden State Gem Company, bankrupt, given on April 14, 1932 and Friday, April 22, 1932, in the courtroom of Earl E.

Moss, who at that time was referee in bankruptcy. I took those proceedings down in shorthand, subsequently transcribed them and objectors' exhibit one is a full, true and correct copy of the proceedings had and the evidence taken on those hearings and at the times mentioned. The transcripts of the evidence of the witness M. E. Heiser appearing on pages 11, 20, 44 and 148 or beginning on those pages, was given by that witness at the times stated and is true and correct. Objectors' exhibit one to the deposition of C. N. Olson, is offered in evidence.

No cross examination.

H. A. DEWING, a witness on behalf of objectors, testified as follows:

Direct Examination.

I live at Los Angeles and am a Court Reporter connected with Reynolds and McClain. I have been a Court Reporter for 35 years, reporting for Ventura and Santa Barbara Counties, the United States Board of Tax Appeals, and for six years have been a reporter in the Federal Court. Reynolds and McClain are the official reporters for the Federal Courts in this District. Objectors' exhibit one to the deposition of H. A. Dewing is a transcript of the arguments on motion to vacate judgment and set aside default in the case of Heiser vs. Woodruff in the District Court of the Southern District of California, Central Division. These proceedings were reported on September 26, 1939 before
Judge Cosgrove. I reported the proceedings had at
570 that time and this is a true and correct transcript of
the proceedings. The transcript does not contain any evidence. I will check my notes to be sure whether any evidence was introduced and will report back later.

Objectors' exhibit two to the deposition of H. A. Dewing is a transcript of the testimony and proceedings on the presentation of evidence as to the value of the property of plaintiff in the case of Heiser v. Woodruff in the United States Court for the Southern District of California, Central Division, before Judge Cosgrove, No. 7256-C-Law. I took and transcribed the proceedings shown on pages 52 to

333, inclusive, of the transcript and they are fully and correctly shown. Mr. McClain reported the proceedings contained on pages 2 to 51, inclusive.

Cross Examination.

The proceedings shown by this transcript were had pursuant to the order of June 8, 1939.

C. W. McClain, as a witness for objectors, testified by deposition as follows:

Direct Examination.

I am a member of the firm of Reynolds and McClain which firm has been official reporters to the United States District Courts for this District for ten years. I have been a Court Reporter since 1907. I was an official Court Reporter for the United States District Court for this District in June, 1939 and reported the proceedings on the first day of the hearings had June 19, 22, 23, 27, 28, 1939 in the case of M. E. Heiser, Plaintiff, v. Leonard Woodruff, et al, Defendants, No. 7256-C-Law before Judge Cosgrove, which proceedings are shown in transcript before me, identified as objectors' exhibit number two to the deposition of H. A. Dewing. The part of the proceedings I took were transcribed by me and are shown at pages 1 to 51, inclusive, and are true and correct as shown by the transcript. Objectors' exhibit two is offered in evidence.

Cross Examination.

The proceedings lasted five days. I reported the first day and assigned Mr. Dewing to report the balance.

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571 J. A. Seelye, as a witness for objectors, testified by deposition as follows:

Direct Examination.

I live at Van Nuys, California, about twenty miles due west of Los Angeles. I have lived in Southern California thirty-seven years and am now cashier for the Acme Brewing Company, Los Angeles. In 1928 I was connected with the

United States National Bank, Eighth and Spring Streets, Los Angeles as Assistant Cashier and Auditor. I had charge of safe deposits. I issued receipt for them and saw that they were properly deposited in the vault. I knew M. E. Heiser. I got acquainted with him in connection with the bank and at first in connection with an account that he opened at the bank. These instruments you hand me are photostatic copies of the individual ledger sheets of the Australian-American Gem Mining Company in the United States National Bank. I would say that this was my first meeting with Heiser, at the time this account was opened. He was either the sole signer or one of the signers of this account of the Australian-American Gem Mining Company. "Signers" are persons authorized to draw checks on accounts. This account was opened July 9, 1928.

As I recall, the next transaction with Mr. Heiser was a deposit of some material he wanted placed in safe deposit. I do not recall when that was and have no way of telling. I have not been connected with the bank since it closed late in 1929 or early in 1930. I believe—I would say my connection with the bank closed in September, 1930, that is as close as I can give. I would say that the deposit of the sacks of material by Mr. Heiser was made between the time of this deposit in July, 1928, and the time the bank closed in the latter part of 1929 or early part of 1930.

I actually received the deposit in the bank and recall it very well. It was brought in by truck. I think there were some twenty-odd sacks, that is my recollection. They were placed immediately in the safe deposit vault in the name of Morrie Heiser. It was his own personal property, as represented to us. I recall in general terms the receipt which was issued by me for this material. It stated that the United States National Bank acknowledged receipt from Mr. Heiser of so many sacks, said to contain valuable gems.

There was a discussion between Mr. Heiser and I about putting a value on this material. He wanted a value placed on the material which was to be stated in the receipt. I replied that I had no idea as to the value of them and unless he

wanted to get an appraiser to come there to appraise them and state to us officially or give us a certificate as to value, that there would be no value placed on the receipt. I was shown some of the material by Heiser. The material he showed me had a very close resemblance to country rock, as far as I was concerned. I mean by "country rock" just ordinary rock like we find around any mining claim. There were various sizes, some small pieces and some *quiet* large pieces. I would say they ran from an inch and a half to two inches in size up to five or six inches, as I recall in various colors.

Nobody had access to that material except Mr. Heiser and none of it was taken out until it was all taken out. I have seen these papers before which are now identified as Exhibits 1A and 1B to the deposition of J. A. Seelye. That material was taken out of the bank under this case number but before it was taken out we had an order from the Court or the sheriff or somebody, before we would release it. By referring to this exhibit, I would say it was released sometime subsequent to April 19, 1929. It was all taken out of the bank at one time, after the storage was paid on it, that was the end of it so far as we were concerned.

Mr. Heiser never made any claim on the bank for this material. There was only one deposit made in the bank of this material. It was all deposited at one time. And whatever was deposited was taken out at one time.

I do not know Walter Calvin Smith. He did not have access to this material *which* it was in the bank.

573 I do not know Leonard Woodruff. He did not have access to this material while it was in the bank. He did not take any of it out of the bank.

No particular value was placed upon any particular sack by Mr. Heiser and no particular sack was pointed out to me by Mr. Heiser or designated as containing material of more value than the other sacks. In response to my suggestion that he have an appraiser appraise the property if he wanted a value placed on it he said, "It wasn't necessary", that he would take the responsibility for the material without any value on it and he did that.

The sheets showing the account of the Australian-American Gem Mining Company in the United States National Bank of Los Angeles are identified as objectors' exhibits 2-A, 2-B and 2-C to the deposition of J. A. Seelye.

No person representing or purporting to represent either Walter Calvin Smith or Leonard Woodruff, or both, ever gained access to this material while it was in the bank or took any of it away before the attachment. It would be absolutely impossible for anyone to get any of that material out except on an order from Mr. Heiser or outside of an attachment or a legal proceeding of some kind.

Cross Examination.

I am in error as to the time of the closing of the bank, it was September, 1931. I issued a receipt to Mr. Heiser for this material. When it was taken out it was taken out under this attachment in the suit of Woodruff v. Golden State Gem Company.

The *objectors'* offer in evidence their exhibits 1-B, 2-A, 2-B and 2-C to the deposition of J. H. Seelye.

FRANCIS B. COBB, as a witness on behalf of the *objectors*, testified to the deposition as follows:

Direct Examination.

I live at 5119 Earl Drive, Altacanada, California. I am engaged in the practice of law with my office at 639 South Spring Street, Los Angeles Stock Exchange Building, Los Angeles, California. I am a man of family, a native Texan and have lived in Southern California since 1923; I have been engaged in the practice of law since 1926, graduating from Loyola College, Los Angeles. I represent, or
574 have represented, P. M. Jackson, Trustee for the estate of Leonard J. Woodruff, in the matter of the bankruptcy of Leonard J. Woodruff in the United States District Court in the Eastern District of Oklahoma in case #7623; my recollection is I was first employed in September or October, 1939 in connection with the judgment in favor of Mr. Heiser and against Mr. Woodruff. I was requested by the Trustee to make an examination of the

files and records and furnish my suggestions as to whether the judgment could be vacated and the general grounds under which the proposed attack on the judgment would be made. I received my instructions from P. M. Jackson, Trustee, and in pursuance of those instructions I prepared a proposed answer and a copy of notice of motion and presented the authorities in support of the motion and I believe an affidavit in connection with the motion. I subsequently filed a motion to vacate the judgment in that case which was heard by Judge Cosgrave which was denied.

No evidence was offered and received. The Court merely listened to argument by opposing counsel or by the two counsel, Mr. Meyberg, representing Mr. Heiser, and myself, representing the Trustee. The argument that was advanced on behalf of the Trustee followed the brief that had been made on the points and authorities that were attached to the motion. Prior to the completion of the argument, the judge interrupted my argument and asked to hear from Mr. Meyberg, and after Mr. Meyberg had talked a short time he denied the motion. The only proceedings had on the presentment of the motion to vacate the judgment on behalf of the Trustee were the arguments before the Court by counsel upon the questions involved and no evidence was heard; no evidence was offered or received; it was purely an argument on the questions of law that had been raised by the motion and the argument of counsel. Other than the appeal there were no other proceedings in respect to the judgment itself after that.

"I know Leonard J. Woodruff, his wife Mrs. Willie May Woodruff and Howard L. Woodruff. I met them either in the later part of 1931 or the winter and spring of 1932. I represented Mr. and Mrs. Woodruff both during the year 1932 and 1933 and am familiar with the so-called thirty-six sacks of sapphires, rough gems, involved in this litigation and first learned about the matter in a proceeding in the matter of the Golden State Gem Company in a hearing before Earl E. Moss, in which I represented Leonard J. Woodruff in a bankruptcy proceedings which was in the
575 matter of the bankruptcy of Golden State Gem Company, bankrupt No. 13393-J held before Earl E. Moss, referee, pending in the United States District Court in and for the Southern Division of California.

On May 9th, on or about that date, I had occasion to see Mr. M. E. Heiser near the Hall of Justice, in the City of Los Angeles. Mrs. Woodruff and I, and I believe Paul Hornaday, came from the District Attorney's office with a deputy, I think his name was Russell, and went to a truck which was located between Temple and First Street, on Broadway and on this truck was what is known as semi-precious stones or sapphires and zircons. I was there in connection with a complaint that the District Attorney's office had under consideration against Leonard J. Woodruff, Mr. M. E. Heiser being the complaining witness, who had called on them with the British *Counsul* in Los Angeles and asked for a complaint in connection with some 35 or 36 sacks of rough sapphires. I had been employed by Mr. Woodruff to ascertain the nature of the matter and see what could be done in his behalf. And I advised the District Attorney's office that it was purely a civil matter and the District Attorney's office stated that they were advised that the *sapphire* had been disposed of, and I corrected that impression and told them they could be produced, and finally it was agreed that if the sapphires were produced and placed where they could be subject to levy, or whatever action Mr. Heiser might desire to take, that they would consider it a civil matter and drop any criminal proceedings and I arranged for the sapphires to be brought in a truck to the Hall of Justice and Mr. Russell, a Deputy District Attorney, went down and also Mr. Heiser was there and also Leonard Meyberg and Mrs. Woodruff and Howard Woodruff and Paul Hornaday; we all went down to the truck around 12:00. Mr. Heiser made an examination of the stones and identified them as the sapphires that were in question. It was agreed to store them in the Colyear Warehouse for a reasonable period of time; this was done and a warehouse receipt was taken for them. This receipt was issued in my name and I presented a copy of it to the Deputy District Attorney. I held them until some time in the year 1933 at which time I delivered the warehouse receipt to Mr. Earl Opsahl, attorney for Mr. Woodruff, on the request of Mr. Woodruff, and I transferred the receipt to Howard Woodruff.

576 Mr. Heiser examined the stones. He climbed on the truck and each sack was examined. Mr. Heiser claimed that one sack was missing but I had no independent knowledge of this. The truck on which the sacks were loaded was parked on the side of the street between Temple and First Street on Broadway near the Hall of Justice in the City of Los Angeles, approximately two or three hundred feet from the corner and near the office of the District Attorney.

At the time Mr. Heiser made a statement to the effect that he could not find what he termed "one of the better stones"; however, he merely looked at the top of the sacks. He opened the top of each sack. A few of the sacks were torn on the side and he made an examination of the contents of those sacks by examining the material through these holes; the sacks were not emptied nor were the cans in the sacks emptied. The contents of the sacks were not weighed.

I did not go with the truck to the warehouse after this examination.

Cross Examination.

I have no understanding as to how Mr. Woodruff came into possession of the stones but Mr. Woodruff advised me in May or about May that he could produce the stones. I was acting for Leonard J. Woodruff when Howard Woodruff brought the stones to us by truck for examination.

I do not have any recollection of Mr. Clare Woolwine being present at the time these stones were examined.

Prior to the making of the motion to vacate and set aside the judgment in the case of M. E. Heiser v. Leonard Woodruff, 7256-C-Law, in the District Court of the United States for the Southern District of California, before Judge Cosgrave, Leonard Woodruff made a similar motion, but I hadn't represented Mr. Woodruff since 1933, however, I did perfect an appeal but I do not know if that was an order from Judge Clark and I appeared before the United States Circuit Court of Appeals for the purpose of arguing that appeal. I do not believe I argue anything that was not set forth in the brief.

(At which point Mr. Fischl, of counsel for plaintiff, interposed that he had a certified copy of Mr. Cobb's brief used in the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of the appeal from the order of Judge Cosgrave denying the motion to vacate the judgment in Heiser v. Woodruff, and would offer it in evidence.)

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577 JOHN GREBLE MORAN, called as a witness on behalf of *objectors*', being first duly sworn, testified as follows by deposition:

Direct Examination.

My name is John Greble Moran, also known as Jack Moran, and I live at 154 North New Hampshire Avenue, Los Angeles, California and I have lived in Los Angeles for twenty or twenty-five years. I am engaged in the business of Art and antiques and period furniture and I was at one time a dealer in jewelry and precious stones. I know Leonard J. Woodruff and have known him for about fifteen years and am acquainted with and have been in Mr. Woodruff's home in Los Angeles many times. I am also acquainted with Mr. M. E. Heiser, I believe I met him about April or May or 1928 in Hollywood, California at my place of business at 1757 North Highland Avenue, now 1759. At that time I had been asked to appraise some antique jewelry, for Mrs. McPherson at the Angelus Temple which I did and which appraisal was one I deemed a fair appraisal but much higher than I would have given to a dealer; a few days later Mr. Heiser came in and introduced himself to me and asked if I was Mr. Moran and if I had appraised some jewelry for Mrs. McPherson. To which question I answered, "Yes." He became somewhat incensed and a little belligerent when I refused to raise the value of my appraisal of this jewelry and would not consider what he termed a "good fair cut on it". After a few days he returned to see me and asked me if I knew Mr. Leonard Woodruff and when I told him I did he, Mr. Heiser, showed me some samples of Australian sapphires and sought to induce me to prevail upon Mr. Woodruff to finance a big concern in Los Angeles to wholesale and retail all kinds of gems, cut them, etc. and suggested that Mr. Woodruff should "put

up" between $25,000.00 and $50,000.00 and Mr. Heiser promised to give me 40% of the money that I could get Mr. Woodruff to advance. This conversation took place in May or April of 1928 to the best of my recollection. Mr. Woodruff and I had been friendly in more than a business way and when Mr. Heiser again called on me in regard to this I told him I didn't think I could help him in this matter.

578. Mr. Heiser endeavored to have me contact other men to enter into such a business and at that time showed me some uncut Australian sapphires, they were uncut—like chunks of coal almost. I examined them and to my notion they were not very translucent; however it is hard to decide from an uncut stone what it is going to be. The color was greenish, so that they would not be saleable as gems. Mr. Heiser informed me that he had a large amount of these uncut stones and that he could start right into dealing in them.

I saw Mr. Woodruff a few days later, maybe about the same night, about that time, and I told him that Mr. Heiser had been in and had some uncut stones and explained what I have just told you. I also told Mr. Woodruff that Heiser offered me such an enormous cut in it that I didn't think it sounded like a legitimate proposition. I never received any of this money and I don't believe I ever saw Mr. Heiser again.

Cross Examination.

This conversation that I just talked about took place about thirteen or fourteen years ago and I reported my conversation with Mr. Heiser to Mr. Woodruff. Any dealings that Mr. Woodruff had with Mr. Heiser with respect to sapphires and zircons and opals, the subject of this lawsuit I am testifying in, I think happened after I told Mr. Woodruff what kind of a deal Heiser had tried to put over on him.

I have never been called in the case of Heiser vs. Woodruff in any of the litigations heretofore.

Redirect Examination.

I was contacted about a year or so ago to be a witness in this case by Mr. Woodruff.

H. A. DEWING, a witness heretofore duly sworn on behalf of objectors, upon being recalled, testified as follows:

Direct Examination.

My name is H. A. Dewing and I testified earlier this morning. I have examined my records to ascertain whether or not objectors' Exhibit 1 to the deposition of H. A. Dewing contains all of the proceedings and all of the evidence
579 offered and introduced upon that hearing on the day shown in the transcript and that is a full transcript of the proceedings, with the exception of the Judge's opinion and remarks which I note here were included in a separate transcript. This transcript was ordered by Mr. Cobb. The transcript that I made of the Judge's remarks is a true and correct transcript of the remarks of the Court at that time and a copy was delivered to Mr. Cobb and one to Mr. Meyberg. There were no proceedings except the Judge's opinion and the remarks which are included in the transcript. There were no other proceedings on that day. I have checked both my notes and the calendar sheet.

Cross Examination.

Therefore the transcript I identified this morning, which is objectors' Exhibit No. 1 is not complete in that the transcript of the remarks of the Court is not included; that is in some separate transcript. We have a copy of it somewhere and I have it in my notes. I do know the notes were transcribed and a copy is in existence somewhere.

Redirect Examination.

I have my notes with me now. I could read them into the record. However, Mr. Cobb has a copy and I would be willing to obtain a copy of his copy and after identifying it I would be willing to make a certificate and attach it to the new copy.

GEAN KOSTO, called as a witness on behalf of *Objectors*, being first duly sworn, testified as follows:

Direct Examination.

My name is Gean Kosto and I live in Pasadena. My business is restoring old masters and collecting. I have

been in this business since 1915 and have lived in southern California since 1926. I have known Leonard Woodruff since the end of 1926 and have visited in his home on several occasions. I know Mr. Heiser. I met him in 1928, but I am not sure of the exact time of year, but I met him at the Woodruff home. At that time, Paul Hornaday was there and also some jewelry man named Smith and Mrs. Woodruff was there. At that time I heard a conversation between Mr. Heiser and Mr. Leonard Woodruff and
580 Mr. Herman Woodruff. I was in the same room with them. The conversation had been between Woodruff and Mr. Heiser about some mine; Mr. Heiser was speaking about a big mining business to Mr. Woodruff and proposing to him that he has got big prospecting and wonderful mines in Australia. I told Mr. Woodruff he was buying enough things here that he could see. I asked Mr. Heiser to show Mr. Woodruff something that was worth something and Mr. Heiser offered to show his mines. Herman Woodruff agreed with me that Mr. Leonard Woodruff should see the mines before buying but at that time Mr. Leonard Woodruff was awful sick. It was finally agreed after much discussion, that Heiser and Herman Woodruff were to meet within two or three weeks and go to Australia but I do not know whether they met or not. However, Mr. Heiser agreed to go to Australia with Herman Woodruff in order that Herman Woodruff could see the things is right, the proposition Mr. Heiser gave Woodruff.

Cross Examination.

My nationality is Rumanian and I am a Canadian subject.

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581 HOWARD L. WOODRUFF, as a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live at 1525 South Hauser, Los Angeles, and I am the son of Leonard Woodruff. I have been working in the shipyards. I was 12 years old in 1928 and was living with my mother and father at 2436 Inverness Avenue, Los Angeles, where I first saw Mr. Heiser some time in the summer of 1928. I saw him numerous times; 30 or maybe 40 times.

In May, 1932, I was here in Los Angeles and I remember an occasion when certain material was taken on a truck to a building in Los Angeles. I was there. We met downtown. I don't know exactly—Ninth and Spring, or somewhere about Eighth or Ninth and Spring, I believe. The so-called sapphires were on the truck in 35 or 36 containers, something like that. My mother, Ern Brown, Raymond Macdonald, Paul Hornaday, Francis B. Cobb, M. E. Heiser and Leonard Meyberg were present. The stones were on the truck and my mother and I met them down there and Mr. Heiser came out there and I believe Mr. Meyberg, Mr. Cobb and Mr. Hornaday. Mr. Heiser had been claiming that these stones had been misappropriated, so he got up on the truck and opened each sack and looked at them. And my mother asked him, "Are these your stones?" And he reached down in them maybe six inches or a foot and lifted out handfuls of them, and he looked at each sack, container. My mother asked him, "Are these your stones?" And he said, "Yes, they are. I am not positive as to whether all of them are here or not. I will have to weigh them first." So it was agreed to take them down to Colyear's Warehouse and there were weighed. I don't remember exactly how much they weighed—4200 or 4300 pounds, I believe. Mr. Heiser was present when they were weighed at the warehouse, sack by sack. Then they were placed in a vault at the warehouse. It couldn't be agreed upon as to whose name they were to be put in so finally they decided to put them in Mr. Cobb's name. Mr. Heiser agreed to that. He said, "Put them in his name." After they were weighed, Mr. Heiser said they were all there. In fact, he thought there was a little extra weight in them. When he examined them on the truck downtown he would reach down inside and take out handfuls. He emptied some of the cans out and poured them out and put them back in. He said he was satisfied they were his stones.

582 The stones were afterwards transferred to my name in the warehouse. I have not taken any of those stones out myself. In 1939, Mr. Heiser and several supposed to be expert witnesses wanted to look at them and I signed an access slip so that they could be appraised. Mr. Heiser collected samples from the sacks and put them in

envelopes. Those were the only ones that were ever taken out of the warehouse, except we had the warehouse take stones up to the Post Office Building to use during the hearing before Judge Cosgrave. They were afterwards returned to the warehouse. As far as I know, all of the stones that were put there in 1932 are still in the warehouse with the exception of the few Mr. Heiser took out and I don't know whether they were returned or not.

Cross Examination.

I am 26 now and I was 16 at the time the truck was examined down on Eighth or Ninth and Spring Streets. Raymond Macdonald was driving the truck. He picked up the material at my mother's house on Inverness Avenue in Los Angeles. I don't know how long it had been there. Mr. Francis Cobb was present. Mr. Heiser said there was one sack missing. That is the reason he had to weigh them. I did not hear Mr. Heiser say that some of the best stones were missing. It was not said at the warehouse that sand was put in the sacks.

CHARLES B. MARLATT, as a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

My home is 2726 West Ninth Street, Los Angeles, and I am Manager for Colyear Van & Storage Company which is engaged in moving, packing, shipping and storage of household goods, office fixtures and general storage at 415 South San Pedro, Los Angeles. It stores household goods and various materials and other commodities. We have in storage here some materials our warehouse receipt calls bags of rock. I am not a mineralogist.

When a shipment comes in here, it is given a lot number. This particular lot number is 21635. Each article is marked with that lot number. 21365, and the bag numbers would be like 1, 2, 3, 4, 5, and each article is marked with that lot number and tagged separately, 1, 2, 3, 4, 5, etc. We make up a storage contract. We have a loose leaf ledger sheet in there, and we also have a main book that it is entered in from which we procure the consecutive lot numbers,

and that book shows the lot number, and then when
583 it is finally put in location, it shows the location and the floor, and each floor is numbered, and the rooms are numbered individually. The listing receipt calls for 35 pieces in this lot. This is the type of record we keep as part of our business and as a part of the permanent records used in connection with this storage contract. This checking list you have here is used as a part of the permanent records in connection with the permanent warehouse storage contract. I have here the checking list and the contract.

The checking list is identified as objector's Exhibit 1 to the deposition of C. B. Marlatt and is offered as evidence.

The storage contract is identified as objector's Exhibit 2 to the deposition of C. B. Marlatt and is offered as evidence.

This storage contract was originally taken in the name of Francis B. Cobb and was assigned on June 28th, 1933, to Howard C. Woodruff. No new contract was issued. We have a written order from Mr. Cobb to do that.

No *Corss* Examination.

NORMAN R. DUNN, as witness on behalf of the objectors, testified by deposition as follows:

Direct Examination.

I live at 1311 North Coronado Street, Los Angeles, and have been an Assistant National Bank Examiner since April 16th of this year. From December 10th, 1941 to April 16th, I was Assistant Examiner in the Foreign Funds Control and prior to that time, for 19 years, I was connected with the United States National Bank and its receiver, Eighth and Spring Streets, Los Angeles, which went into the hands of a receiver on August 18th, 1931. Prior to the receivership, I was Assistant Auditor under Mr. J. A. Seelye, the auditor, and subsequent to that time I handled the books of the receivership and was assistant receiver.

I remember the account of the Golden State Gem Company, of Nevada and the account of the Australian American Gem Mining Company. The receivership of the bank was

terminated on January 31st, 1942. All the records of the bank that went into the hands of the receiver have been destroyed with the exception of the receivership books. All old bank records have been destroyed. Prior to the destruction of the records I was called upon to make a
584 search for the purpose of ascertaining what our safety deposit records disclosed with reference to certain materials which were stored in the bank in August of 1928 either by the Golden State Gem Company or M. E. Heiser. I was unable to locate those records. The request was made after the bank closed and I was unable to locate the records. I made a thorough search for them. I made two searches. I was unable to find any safe-keeping receipts or records.

I am familiar with objector's Exhibits 1a, 1b, 2a, 2b and 2c to the deposition of J. A. Seelye. These Exhibits are photostats that I had made. At the time they were made, they were part of the records in the hands of the receiver. The records which I had photostated were all of the records that I could find pertaining to the Golden State Gem Company of Nevada and the Australian American Gem Mining Company. Objector's Exhibit 1 to the deposition of N. R. Dunn is a photostat copy of a part of the records of the bank which we had there in the bank as is also objector's Exhibit 2. These instruments were part of the records found in the bank.

Objector's Exhibits 1 and 2 to the deposition of Mr. Dunn are offered in evidence.

No Cross Examination.

LOUIS ORECK, as a witness for the objectors, testified by deposition as follows:

Direct Examination.

I live at 527 North Norton Avenue, Los Angeles. I have been engaged in the jewelry business for 42 years. My place of business now is at 130 North Brand, Glendale, California. Irving Oreck is my son. I do not know where he is now. I have had about 30 years dealing with semi-precious stones. I would call myself an expert. I have had a lot of ex-

perience. I can tell zircons, sapphires and opals when I see them. I would buy rough stones and send them to be cut.

I remember the Sheriff's sale at public auction of some materials here in Los Angeles in 1929. I attended the sale. It was upstairs in a big building. I don't know just where it was located. I don't know who was in charge of it. Quite a number of people were there. Leonard Woodruff was there. It was a public sale. I was there to find some zircons for my son, to pick out some for him, to see if they were worth buying. There were a lot of sacks and there
585 were some large cans that had covers on them. I examined most of the stuff. I picked out one sack for my son which I thought to be pretty good. The others looked like a bunch of gravel. I picked out what I considered to be the best sack. My son bought it at public auction for $150.00. It weighed close to 100 pounds and was supposed to contain sapphires. I saw quite a lot of people there and heard a lot of excitement. I could have bid on the rest of the stuff if I had wanted to. In examining it I did not find any zircons or opals. I saw one piece of jade there—about 10 pounds. I looked at it. It had so much inferior stuff in it I didn't want it. I wouldn't give anything for it. I didn't want it.

My son went to work on the sack of stuff he bought for $150.00. He picked out the best stuff and put it in a cigar box, then he had one cut somewhere and found that it was worthless. He took it to his home from the place where he bought it. I examined the sack of material that he picked out and put in a cigar box. He finally *through* it out and gave me the cigar box. It was worthless.

No Cross Examination.

CLAIRE E. CONE, as witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live in Los Angeles and I am a reporter for the Division of Corporations of the State of California and was so employed in 1937. Objector's Exhibit 1 to the deposition of Claire E. Cone is a transcript of my stenographic notes

taken at a hearing in the matter of International Gems which started on July 20th, 1937. There were several hearings which I correctly noted on the front sheet of the transcript. I reported proceedings on each of the hearings indicated and at that time was an official reporter for the Division of Corporations. The report was done in the matter of the investigation and examination of *Internation* Gems which was an investigation of this corporation by this Department. The matter was docketed in the Division of Corporations at that time as file No. 65704 LA. There were 313 pages in the transcript. The first three or four pages in the transcript contain an index. The testimony of Mr. M. E. Heiser appears to have started at page 127 by direct examination, *corss* examination 196, redirect examination 205 and he was called for reexamination at a later ses-
586 sion, page 224. There is other testimony of Mr. Heiser on page 230 and page 261. I reported the testimony of Mr. Heiser as shown in the transcript and the transcript is a true and correct record of his testiinony given on the occasions noted.

Thereupon, the testimony of M. E. Heiser as shown in the transcript was offered in evidence. Harry A. Goldman appeared and participated in the proceedings as attorney for Mr. Heiser. The Exhibit shown on pages 109, 110 and 111 is a true and correct copy of the Exhibit indicated there. It was introduced in evidence at the hearing.

Exhibit appearing on pages 109, 110 and 111 is offered in evidence as a part of this deposition.

Cross Examination.

This record which I have identified and concerning which I have testified, is in the matter of International Gems, a corporation. I do not know whether Mr. Heiser appeared in those hearings in any other capacity than as a witness.

Redirect Examination.

The proceedings reported on pages 1 to 4 of the transcript occurred during the hearing and as a part thereof, also pages 5 and 6 down to the taking of the testimony of Mr. Jackson.

Pages 1 to 6 down to the taking of the testimony of Mr. Jackson *offerred* in evidence and as part of this deposition.

(Certificate of Notary shows that depositions taken before C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California, at which time the witnesses, C. N. Olson, H. A. Dewing, J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck and Claire E. Cone appeared and testified in pursuance of the notices attached to the depositions.

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587 D. K. STERN, called as a witness by the objectors to the claim of M. E. Heiser, testified as follows:

Direct Examination.

My full name is D. K. Stern. I am assistant auditor of the Wells Fargo Bank and Union Trust Company of San Francisco and am familiar with the records of the safe deposit vaults of the Union Trust Company, which merged with the Wells Fargo Bank either in December, 1923, or January, 1924. I have caused an examination of the records of the safe deposit vaults of the Wells Fargo Bank and Trust Company with reference to M. E. Heiser to be made. The records show that during the period from 1915 until 1928, a safe deposit box was rented in the name of E. A. Lobree, M. E. Heiser and Mrs. M. E. Heiser, jointly, in the Wells Fargo Nevada National Bank, which is now the Wells Fargo Bank & Union Trust Company. The box was rented on September 10th, 1920 and surrendered April 10th, 1923. It was a five dollar box, 2½ inches deep by 5 inches wide by 23 inches long. The five dollar box was surrendered on April 13th, 1921 for a fourteen dollar box, 3½ by 10½ by 23 inches long. We have no record of any other safe deposit box rented to Mr. Heiser. Mr. Heiser, on February 11th, 1915, deposited in our storage vault one wooden chest under our receipt 210 with a declared value of $1000.00, which was withdrawn on March 24th, 1916. On June 15th, 1915, Mr. Heiser deposited one large iron chest under receipt 228 with a declared value of $750.00, which was withdrawn on March 24th, 1916.

On October 1st, 1915, M. E. Heiser deposited one box, covered with burlap, under our receipt No. 251, with a declared value of $500.00, which was withdrawn on March 1st, 1916.

On April 7th, 1916, M. E. Heiser deposited one burlapped chest, under our receipt No. 282, with a declared value of $1,000.00 which was withdrawn on August 9th, 1916.

On May 1st, *1917,* M. E. Heiser deposited one leather suitcase, under our receipt No. 291, with a declared value of $300.00, which was withdrawn on May 18th, 1916.

On September 1st, 1916, M. E. Heiser deposited two burlapped boxes, under our receipt No. 332, with a declared value of $500.00, which was withdrawn on October 3rd, 1916.

On July 23rd, 1919, Mr. or Mrs. M. E. Heiser deposited one grip, under our receipt No. 658, with a declared value of $500.00, which was withdrawn on September 30th, 1919.

588 On September 13th, 1920, E. A. Lobree, and M. E. Heiser deposited one small trunk, under our receipt No. 904, with a declared value of $1,000.00, which was withdrawn on December 31st, 1920.

There are no further records of any deposits by Mr. Heiser from the period of January 1st, 1915, through the year 1928.

The records do not show the contents of any of the packages. I have examined all of the records of the Wells Fargo Bank as well as the records of the Union Trust Company in connection with the storage in vaults and safe deposit boxes in the name of M. E. Heiser alone or with others from 1915 to 1928, inclusive and they do not disclose any other safe deposit boxes or any other deposit in any vaults, storage or otherwise, than I have testified to. The records are complete to my knowledge and belief. The records of the Union Trust Company prior to the merger are in existence and were included in the examination. I examined all records for the name of Maurice E. Heiser, Morrie Heiser and M. E. Heiser.

No Cross Examination.

(Certificate shows deposition taken August 28th, 1941 before Helen V. Flanagan, a Notary Public in and for the

City and County of San Francisco, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, pursuant to notice annexed to deposition.)

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589 JEFFERSON J. GRAVES as a witness for the objectors to the claim of M. E. Heiser testified as follows:

My name is Jefferson James Graves. My legal residence is in Fresno County, California. In 1928 I knew M. E. Heiser and I then resided at the Huntington Apartments in San Francisco. In 1928 I had conversations with M. E. Heiser relative to the sale of products of mines in Australia which Mr. Heiser asserted he filed leases on or owned. He approached me. He told me my Mother had told him that I had connections in France by which I could sell sapphire. He asked me to contact my associates in France in reference to the sale of large quantities of sapphire which he claimed to control. He said he controlled 80% of the sapphire output of the world. This product was to be secured from mines in Australia. In response to Mr. Heiser's request I both wrote and cabled my associate in Paris, Mr. A. LeQuintree, with whom I had formed a limited company under the French law. The International Trading Company. I told Mr. Heiser of the cable and showed him a copy of it. He showed me several parcels of rough and cut stones from the mine. They were rough and cut blue stones. Sapphire. Holding them up to the light, some of them were light, some of them were dark blue, some had yellow streaks in them and some had green streaks. I believe he had a package of small dark stones that he said were rubies. I don't know what they were. He said they were rubies.

I had numerous conversations with him from our first meeting and through to the latter part of August with respect to the sale of stones in France. I also had correspondence with Mr. LeQuintree and various cables with reference to the sale of stones. The correspondence and cables were shown to Mr. Heiser. I have that correspondence and those cables now. The object of the correspondence and cables was to ascertain whether my associate and his contacts in France were interested to sell large quantities of sapphire which Mr.

Heiser stated would be first class quality and very large stones. I received an answer from Mr. LeQuintrec and communicated it to Mr. Heiser which was in effect that if he could supply or furnish the quality of sapphire that he stated he had, and the sizes, that my contacts in Paris had agreed to sell to three different concerns a large quan-
590 tity of sapphire.

I met Mr. Heiser in Los Angeles in 1928—the latter part of August with Mr. Calvin Smith. I met him at the hotel and from there walked to the office of his attorneys. I have their names in my file. When I met Mr. Heiser in Los Angeles, I had agreed to go to France. I told him I would go to France and meet him there and introduce him to my associate, Mr. LeQuintrec, and Mr. Bietrix, a wholesale jeweler. The suggestion of a meeting in France came from Mr. Heiser either in a conversation at the Huntington Apartments or at my office at 625 Market Street about two months before I went to Los Angeles. He wanted me to go because I knew the French people, and could speak the language, and he did not, and he thought it would be very advantageous if I were there to assist him in the sale of sapphire. He stated that he had in the vaults of the Bank of Australasia, in London, as I recall it, something over 5,000 ounces of very fine sapphire, and in which there were fine blues, and large stones that he had agreed to show to my contacts.

In a conversation with Mr. Heiser as we proceeded from his hotel to his attorneys' office, he had with him some papers and among them were some stock certificates that he called gold certificates and he wished to sell me some of them. The corporation was the Golden State Gem Company of Nevada, as I recall. He showed me some of the certificates. I told him I would not buy any. I was not interested in buying any. He wanted me to go on the Board of Directors and become an officer of the corporation and I refused to do that. He offered me an inducement but what it was I am not certain. He stated that the corporation had or was entering into a contract with the Heiser Burmah Sapphires, Ltd., I believe is the name, of Australia, to purchase their entire output and any agreement he had with the International Trading Company would have to be with the Golden State

Gem Company of Nevada. He also stated that he had or was turning over to the Golden State Gem Company of Nevada a large quantity of industrial sapphire and other stones for which he was to receive stock in the corporation.

I accompanied him to his attorneys' office in Los Angeles on that occasion. He introduced me to an attorney there whose name I don't recall. My recollection is that it was for the purpose of drawing an option, or writing me a letter in option form, for the sale of his products in Europe. This letter which you hand me is the letter. The change in date on the next to the concluding line of the second page,
591 and of the month, with initials, was done in my presence. The reason for the change was that Mr. Heiser continually delayed his date of sailing and the 30th day of August would not have given sufficient time to have *consumated* a deal. The change made was suggested by me. This letter is offered in evidence as "Objector's Exhibit No. 1" and is as follows:

Objector's Exhibit 1.

Frank L. Hart, Official Shorthand Reporter.

Clifford A. Rohe
Herbert Freston
George W. Nilsson
L. E. Tripp
Henry S. Dottenheim
Alfred Barstow
Robert E. Mulroney
J. R. Files
H. E. Bianchi
Ralph E. Lewis
Clyde F. Murphy
Gerald V. Weikert
Charles H. King
J. A. McLaughlin
Sydney Wetzler
James T. Boyle
Thomas J. Clark
Harold P. Curtis

Law Offices
Rohe & Freston
1010 Hellman Bank Building
Los Angeles, California

In Reply Refer to Mr.
File No.

August 30, 1928

Mr. James Jefferson Graves, Washington Arms Apartments, 36th and Speedway, Venice, California.

Dear Sir: I am authorized by the Board of Directors of the Golden State Gem Company of Nevada, to offer you an exclusive option for the purpose of closing a contract with a French Syndicate, subject to my approval, for the sale of

the following rough sapphires each year, for a period of twenty years:

#1 grade blue sapphires, up to 2000 ounces, $60.00 per ounce;
#2 grade blue sapphires, up to 1000 ounces $40.00 per ounce;
#3 grade blue sapphires, up to 100 ounces $20.00 per ounce;
#4 grade blue sapphires, up to 1000 ounces $10.00 per ounce.

together with the exclusive right to receive special offerings of gems not coming with the above grades. Samples will be prepared and submitted covering size and quality of each grade.

I will proceed to Europe with you with the necessary legal authority to execute such contract as may be agreed upon.

This option to you for the securing of the contract with the French Syndicate shall be good up to and including the 30th day of October. November M. M.

Very truly yours,

MORRIE HEISER.

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592 The letter is addressed to me at Washington Arms Apartments. I had taken an apartment on the beach to go swimming.

I sailed on the steamer "Paris" the latter part of September, 1928. I think it was the 22nd and landed at LeHavre. I had an arrangement to meet Mr. Heiser in London as soon as I could get Mr. LeQuintree and his contacts to go there with me or to meet us there. Mr. LeQuintree and I met Mr. Heiser in London very early in October—the 4th, I believe, of October, 1928. Mr. LeQuintree, Mr. Heiser and I discussed the sale of the sapphire. Mr. Heiser wanted us to form a company for the purpose of selling stock on the French Bourse or Stock Exchange. At that time we were awaiting the arrival of Mr. Poncet, of Gruet et Cie, and Mr. Bietrix. Gruet et Cie were large buyers and cutters of col-

ored stones in Paris and Mr. Poncet was a member of the firm. Mr. Poncet and Mr. Bietrix came to London and we had a meeting with Mr. Heiser the next morning after their arrival which was I think October 6th, 1928. We met in the vaults of the Bank of Australasia on the Strand in London. Mr. LeQuintrec, Mr. Bietrix, Mr. Poncet, Mr. David Hack of London, Mr. Heiser, Mrs. Heiser and myself and the manager of the vaults were present at the meeting. Mr. Hack was a friend of Mr. LeQuintrec and he was interested in going into the deal if it appeared satisfactory to him on investigation. The members of the bank brought out of the vault various packages, canvas bags, and cans containing stones which were opened in our presence and examined by the experts, Mr. Poncet and Mr. Bietrix. Mr. Bietrix said, "Well, show us some good stones." Mr. Heiser continued to open the packages and Mr. Poncet shook his head. Mr. Poncet also spoke but just what he said I don't recall. He said something aside to Mr. Bietrix to start with and Mr. Bietrix said, "Well, show us some good stones. Where are they?" Mr. Heiser continued to open packages. Mr. Poncet continued his examination and then said, "Why, this has all been picked over; many of these stones have been tried on a wheel. This is not unpicked-over rough sapphire. It has all been picked over." Mr. Bietrix demonstrated anger, and in a very loud voice cried, "Show us one big stone—show me one—only one; I ask to see only one big stone."

593 Heiser was unable to show one good big stone, and finally admitted in the presence of these gentlemen that the sapphire there had all been picked over many times. He said he had a number of additional packages on the way from Australia which he expected to arrive any day and among them would be some big stones of the finest quality along with many large stones. I think he said there would be 9 packages. We then left the bank.

It was arranged between Mr. Heiser, Mr. LeQuintrec and myself that Mr. Heiser, upon the arrival of these packages that were coming to London, would bring them to Paris without opening them and open them in our presence in the office of Mr. Bietrix. I advised him where the offices were. Mr. LeQuintrec and Mr. Bietrix then returned to Paris. I

waited over a couple of days and then returned to Paris. I told Mr. Heiser that he would have to show these gentlemen the sapphire that he had agreed to show or he could not do any business with them.

We met with Mr. Heiser again in Mr. Bietrix' office in Paris about the middle of October—I think it was the 12th. Mr. Bietrix, Mr. Le Quintrec, Mr. Heiser and myself were there. We had several meetings. Mr. Heiser opened several parcels of sapphire. Among them were quite a number of cut sapphire that were very, very poorly done; they were cut in Australia. Mr. Bietrix said they were very poorly done in Mr. Heiser's presence and Mr. Heiser said they had been cut at a cost of I believe $2 a carat. Mr. Bietrix told him it never should have been done; that it was so poorly done they would have to be recut; that they weren't saleable in their present condition. Cutting in France at that time I think was ten francs, which was about forty cents. There was one parcel that Mr. Bietrix said he could sell. He told Mr. Heiser that it was the only parcel that he thought was saleable. It contained only small stones. I don't recall the number. I think it was said it was 30 ounces. Mr. Bietrix sold it. We acted as brokers for Mr. Heiser and sold it for 35,000 francs which was about $1400.00. The package was sold as a unit. There were more than 20 or 30 stones but I can't recall the number. We told Mr. Heiser that if he could furnish large stones of good color and at a price that would meet competition; that if he did so, we could handle it. Mr. Heiser asked Mr. LeQuintrec, Mr. Bietrix and myself to form a company: He said, "I want a stock play; give me a play—give me a stock play." Mr. LeQuintrec told him that unless he had the goods they would not consider forming any company. No company was formed. We went
594 no further with finding an outlet for his products because he did not furnish the quality of product he agreed to.

(Certificate of Notary shows deposition taken on August 29th, 1941 before Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Oscar Samuels, Esq., Room 1700, 333

Montgomery Street, San Francisco, California, pursuant to notice to take deposition annexed to deposition.)

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595 E. A. LOBREE, as a witness for the objectors to the claim of M. E. Heiser, testified by deposition as follows:

Direct Examination.

I am a resident of San Francisco and reside at 8021 Geary Boulevard. Mr. M. E. Heiser is my brother-in-law, having married my sister about the end of 1915 or early in 1916, right after the World's Fair in San Francisco. He is a gem merchant, handling principally opals, sapphires, emeralds, rubies and zircons, both cut and rough. He has been in the business ever since I have known him. A quantity of industrial sapphires belonging to Mr. Heiser were stored at my home in 1922 or 1923. I don't know the exact date I bought my home but it was somewhere around 1923, and just before that I lived at 367—12th Avenue. There was a large quantity of these industrial sapphire—enough to fill approximately three or four shipping cases which would be in the neighborhood of four square feet and three or four feet high. They were very heavy and it might have been as much as two tons. It was brought over here by Heiser from Australia and brought out to my house by a draying company. I can't remember if it was in boxes or not when it was transported to my house. I remember when it was opened it was in these five-gallon oil tins—packed in these oil cans, and they were all sealed up. The material was stored at my house from one to two years, maybe more or less, then it was shipped to New York in one shipment, evidently at Mr. Heiser's instructions *because* nobody else could give me any instructions regarding that material. I understood from Mr. Heiser that in New York it was sent to the Lincoln Vaults and stored there. I don't know whether this material was ever reshipped by Mr. Heiser back to San Francisco. He never told me anything on that subject. I don't think any other material belonging to Mr. Heiser was ever stored at my house. I understood that Mr. Heiser owned or worked some sapphire mines in Australia.

I do not recall filing a claim on behalf of Mr. Heiser as his attorney-in-fact in the matter of bankruptcy of Golden State Gem Company, a California corporation, pending in the District Court of the United States for the Southern District of California, Central *Civision.* I have no recollection on that subject whatsoever except that I was shown where I signed some claim. That is the only recollection I have of it and that does not refresh my recollection.

596 I was not in a position by my own knowledge to place a valuation, whether in a claim that I have referred to, or otherwise, upon uncut industrial sapphires. If I placed a valuation in such a claim, I got it from Mr. Heiser. It is too long ago. I wouldn't remember whether I did or not. I don't remember having spoken to Mr. Heiser about the claim in bankruptcy.

I know that Mr. Heiser has been buying and selling sapphires ever since I have known him. I know he made several trips back and forth to Australia. I have heard from my sister and from him that he mined the things over there and he is making his living out of it and selling them. It is his business. He bought some of the stones that he sold. As far as my knowledge goes, he bought them from miners in Australia and he also mined some. He told me that he bought some from gem merchants that came over from Australia. I do not know the quantity he bought. He bought them anywhere between 1915 and 1925 or 1926. Somewhere along in there. It was over a long period of time. He would buy them whenever he had the opportunity. If they were offered to him and if the purchase in his opinion was of the right value, he would buy them. I am referring to uncut material. He would cut some of them himself. He had a cutting plant in the Lick Building on Sutter Street, between Montgomery and Kearny Streets; and then at his home *had* had a cutting plant set up for a long time. He would sell them to jewelers, both retailers and wholesalers, and to cutting establishments in New York and elsewhere. The information that I have is all gotten from him.

I never did know of Mr. Heiser having any uncut industrial sapphires in a vault in any bank in San Francisco.

The Sapphire Mining & Cutting Corporation was a corporation formed by Mr. Heiser and others for the purpose of forming a complete chain from the mine to the wholesaler of precious Australian gems such as sapphires, opals, etc. I had an inactive interest in the company. I was to assist Mr. Heiser and for the things I was to do for him here I was to get a little stock out of it. I never did get any stock. Mr. Heiser was supposed to get some stock out of it. I was present at some of the meetings. This corporation was active for approximately two years and is not active now.

I have heard of the Heiser Burmah Sapphires, Ltd. I presume it was formed by Mr. Heiser since it has his name in it. Mr. Heiser always sold the gems that he handled
597 during the period from 1915 to 1928. He made his living that way. I do not know exactly what quantities he sold but he made nice sales every once in a while.

No Cross Examination.

(Certificate of Notary shows deposition taken October 7th, 1941 before Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, California, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, in pursuance of the notice annexed to the deposition.)

[Objectors' exhibit 1 to the deposition of Claire E. Cone, reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems, is identical with objectors' exhibit RR-2, the designated portions of which appear at page 1169.]

[Objectors' exhibit 1 to the deposition of H. A. Dewing, reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with objectors' exhibit CC, which appears at page 987.]

[Objectors' exhibit 2 to the deposition of H. A. Dewing, reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with objectors' exhibit RR, the designated portions of which appear at page 1120.]

AUG 1 3 1928

Objector's Exhibit 1 to Deposition of [illegible] Dunn

S-749-A

FREIGHT BILL

1390 EAST 7TH ST., LOS ANGELES

FREIGHT BILL NO.

MORRIE HEISEN
C/O GOLDEN STATE GEM CO

8/13/28 RHM SS 73059

To PACIFIC ELECTRIC RAILWAY COMPANY, Dr., for charges on articles transported:

WAYBILLED FROM	WAYBILL DATE AND NO.	FULL NAME OF SHIPPER	CAR INITIALS AND NO.
S F	8/10/28 616	F A LOBREE	

POINT AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAYBILL REFERENCES	ORIGINAL CAR INITIALS AND NO.
HARV 6 5 LASS			

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
36 SKS MECH ORE INS VALUE 500 00	4325	65	28 11		
			11	TOLLS	
			75	INS	

PACIFIC ELECTRIC RAILWAY CO. LATERN FROT STA. AUG 16 1928 J. G. ANDERSON

TOTAL TO COLLECT 28 97

LOCATION SB

MAKE CHECK PAYABLE TO PACIFIC ELECTRIC RY CO FOR

SUBJECT TO STORAGE OR DEMURRAGE CHARGES IN ACCORDANCE WITH PUBLISHED TARIFFS

The Company aims to serve the public pleasantly and well. Officers and employees are working together in this, and the failure of one is a reflection upon all. Our customers will render a service by calling attention to delinquency. Address General Superintendent, Pacific Electric Building, Los Angeles, California.

The original paid freight bill must be surrendered for overcharges to be refunded and must accompany claims for overcharge, loss, or damage.

MARGIN FOR BINDING

MAKE NO NOTATIONS ON THIS MARGIN

RECEIPT FOR FREIGHT DELIVERED

DRAYMAN'S RECORD

1390 EAST 7TH ST., LOS ANGELES

Objector's Exhibit 2-1 to deposition of N.R.Dunn

FREIGHT BILL NO.

MC MORRIE HEISEN

C/O GOLDEN STATE GEM CO 8/13/23 [illegible] 3059

Received from PACIFIC ELECTRIC RAILWAY COMPANY, articles as detailed below:

WAYBILLED FROM	WAYBILL DATE AND NO.	FULL NAME OF SHIPPER	CAR INITIALS AND NO.
S F	8/10/23 616	E A LOBREE	

POINT AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAYBILL REFERENCES	ORIGINAL CAR INITIALS AND NO.
[illegible] 585 LASS			

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
16 SKS MECH ORE					
INS VALUE 500 00	4325	65	28 [illegible]		
5-5-5-5-4-4-1-4			11 TOLLS		
			75 INS		

LOCATION [illegible] 36 [illegible] 8 [illegible] 192 8

CONSIGNEE OR AGENT

TOTAL TO COLLECT 28 97

SUBJECT TO STORAGE OR DEMURRAGE CHARGES IN ACCORDANCE WITH PUBLISHED TARIFFS

Mc Morrie Heisen
Pio Truck Co Mc Ardle

S-749-A

Objectors Exhibit 2-2 to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18/12
N. E. Corner Eighth & Spring Streets
Los Angeles, Calif., Aug. 21 1928 No.

Pay to the order of Mrs. Grace Law $100.00
one hundred ..... Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

Bal. on small diamonds

(Perforated bank stamp)—Paid 9-4-28.

On reverse:

Endorsed by Mrs. Grace Law.

Endorsed by Grace W. Law.

Two bank stamps.

Objectors Exhibit 2-3, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18/12
N. E. Corner Eighth & Spring Streets
Los Angeles, Calif., August 21, 1928 No.

Pay to the order of R. Pearlman $55.00
fifty five ..... Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

to date

(Perforated bank stamp)—Paid 9-1-28.

On reverse:

Endorsed by R. Pearlman (stamp).

Three bank stamps.

Objectors Exhibit 2-4, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18 12
N. E. Corner Eighth & Spring Streets

Los Angeles, Calif., Aug. 21, 1928 No.....

Pay to the order of Bert Kingston $22.65

Twenty two ..... 65 100 Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

(Perforated bank stamp)—Paid 9-7-28.

On reverse:

Endorsed by Bert Kingston.

Bank stamp.

Objectors Exhibit 2-5, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Aug. 28 1928

United States National Bank, N. E. Cor. 8 & Spring

Pay to the order of Louise Charoulean $14.00

Fourteen ..... Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

...on wages)

Bank stamp.

(Perforated bank stamp)—Paid 9-1-28.

On reverse:

Endorsed by Louise Charailean.

Endorsed by J. D. Thompson.

Bank stamp.

Objectors Exhibit 2-6, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public

.....
Bank Branch

..... Calif., Aug. 29, 28

U. S. National Bank, (8th & Spring)
Name of Bank or Trust Company

L. A. Calif.
City and State

Pay to the order of J. Heller $51.12
fifty one ..... 12/100 Dollars

Notice: In giving this check I acknowledge value received for same and I hereby represent that the amount drawn for in this check is on deposit to my credit in the above named institution free from any claims and that it will be there when this check is presented for payment; and I hereby guarantee payment of this check and agree not to stop payment of same.

Phone
Address .....

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

(Perforated bank stamp)—Paid 9-1-28.

On reverse:

Endorsed by J. Heller.

Two bank stamps.

Objectors Exhibit 2-7, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles Calif., Aug. 31 1928

.....
Bank Branch

U. S. National Bank
Name of Bank or Trust Company
N. E. Cor 8 & Spring
City and State

Pay to the order of J. Heller $54.00
Fifty-four ..... Dollars

Notice: In giving this check I acknowledge value received for same and I hereby represent that the amount drawn for in this check is on deposit to my credit in the above named institution free from any claims and that it

will be there when this check is presented for payment; and I hereby guarantee payment of this check and agree not to stop payment of same.

Phone .....

Address .....

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

(Perforated bank stamp)—Paid 9-1-28.

On reverse:

Endorsed by J. Helfer.

Two bank stamps:

Objectors Exhibit 2-8, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Aug. 31 1928

United States Natl Bank N. E. Cor 8 & Spring

Pay to the order of L A Gas & Elec Corp $15.83
Fifteen ..... 83/100 Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

July 25 to Aug 25 1723-726—

(Perforated bank stamp)—Paid 9-4-28.

On reverse:

Rubber stamp endorsement, Los Angeles Gas and Electric Company.

Bank stamp.

A.E.M. Aug.31.

Objectors Exhibit 2-9, to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept. 1 '28

United States National Bank, 5th & Spring Streets.

Pay to the order of Helen Boyd $6.00
Six ..... Dollars

Golden State Gem Co. of Nev.
Walter Calvin Smith

(Perforated bank stamp)—Paid 9-1-28.

Bank stamp.

On reverse: Endorsed by Helen Boyd.

Objectors Exhibit 2-10, to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18/12
N. E. Corner Eighth & Spring Streets

Los Angeles, Calif., Sept 1 '28 No.....

Pay to the order of Chipron Stamp Co. $178.50
one hundred seventy eight .....50/100 Dollars

Golden State Gem Co. of Nev.
Walter Calvin Smith

(Perforated bank stamp)—Paid 9-7-28.

On reverse:

Rubber stamp endorsement, Chipron Stamp Co.

Bank stamp.

Objectors Exhibit 2-11, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept 1 28

U. S. National Bank, 8th & Spring Sts

Pay to the order of L. E. Johnston $5.00
five Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

For large pet wood specimen.

Bank stamp.

(Perforated bank stamp)—Paid 9-4-28.

On reverse:

Endorsed by L. E. Johnston. O.K.

Endorsed by Walter Calvin Smith ME0318.

Two bank stamps.

Adding machine total—7,379.17s.

Objectors Exhibit 2-12, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18-12
N. E. Corner Eighth & Spring Streets

Los Angeles, Calif., Sept. 1 1928 No.

Pay to the order of Rohe & Freston $450.00
four hundred fifty Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

Bal to Oct 1 28

(Perforated bank stamp)—Paid 9-4-28.

Bank stamp.

On reverse:

Endorsed by Rohe & Freston.

Two bank stamps.

Objectors Exhibit 2-13, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept 1 1928

United States Nat'l Bank N. E. Cor 8 & Spring

Pay to the order of C. E. Buck $50.00 Dollars

Fifty

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

For wages.

(Perforated bank stamp)—Paid 9-4-28.

Bank stamp.

On reverse:

Endorsed by C. E. Buck.

Rubber stamp endorsement, Sanford's Lunch, Frances E. Sanford.

Bank stamp.

Objectors Exhibit 2-14, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept 1 1928

U. S. National Bank N. E. Cor. 8 & Spring.

Pay to the order of L. A. First Nat'l Trust & Savings Bank $120.00 Dollars

one hundred twenty

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

Sept. rent.

Bank stamp.

(Perforated bank stamp)—Paid 9-6-28.

On reverse:

Two bank stamps.

In handwriting #5787R.

Objectors Exhibit 2-15, to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

(Illegible writing in upper right-hand corner.)

Los Angeles, Calif., Sept 7 1928

U. S. National Bank N. E. Cor 8 & Spring

Pay to the order of Y. Lugo $36.90

Thirty-six 90/100 Dollars

GOLDEN STATE GEM CO. OF NEV.

wages WALTER CALVIN SMITH

Bank stamp.

(Perforated bank stamp)—Paid 9-6-28.

On reverse:

Endorsed by Y. Lugo.

Endorsed by (Illegible signature).

Two bank stamps.

Objectors Exhibit 2-16, to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept 1 1928

United States National Bank N. E. Cor. 8th & Spring

Pay to the order of Walter Calvin Smith $6.00

Six Dollars

GOLDEN STATE GEM CO. OF NEV.

WALTER CALVIN SMITH

(Nail Geo.) 2 yrs

(Perforated bank stamp)—Paid 9-19-28.

Bank stamp.

On reverse:

Endorsed: Walter Calvin Smith per C. E. Buck.

Two bank stamps.

Objectors Exhibit 2-17, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

(Illegible initials in upper left-hand corner.)

Los Angeles, Calif., Sept 1 1928

U. S. National Bank N. E. Cor 8 & Spring

Pay to the order of Louise Charoulean $10.00 Dollars

Ten

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

on wages.

(Perforated bank stamp)—Paid 9-5-28.

Bank stamp.

On reverse:

Endorsed by Louise Charailean 726 San. Pedro st

Endorsed by The Famous Department Store:

Two bank stamps.

Objectors Exhibit 2-18, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Los Angeles, Calif., Sept. 1 1928

United States National Bank N. E. Eighth & Spring

Pay to the order of W. C. Smith $25.00 Dollars

Twenty-five

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

(Perforated bank stamp)—Paid 9-7-28.

On reverse:

Endorsed by W. C. Smith. ME 0318.

Endorsed by Charles F. Sanford.

Two bank stamps.

Objectors Exhibit 2-19, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3069
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept 5 1928

Pay to the order of Bank of Italy $491.48
Four hundred-ninety-one 48/100 Dollars

6799

Main Office
To The 16-18
United States National Bank 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
WALTER CALVIN SMITH
JOHN LAWRENCE SMITH

(Perforated bank stamp)—Paid 9-6-28.

On reverse:

Rubber stamp endorsement, Bank of Italy.

Objectors Exhibit 2-20, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3070
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

CB Los Angeles, Calif., Sept 5 1928

Pay to the order of Telephone Co. $2.10
Two 10/100 Dollars

Main Office
To The 16-18
United States National Bank 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
WALTER CALVIN SMITH
JOHN LAWRENCE SMITH

(Perforated bank stamp)—Paid 9-13-28.

On reverse:

Rubber stamp endorsement, Southern California Telephone Co.
Bank stamp.

Objectors' Exhibit 2-21, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co.
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

No. 3071

Los Angeles, Calif., Sept 5, 1928

Pay to the order of Dept of Water & Power $25.78
Twenty-five 78/100 Dollars

To The Main Office United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
WALTER CALVIN SMITH
JOHN LAWRENCE SMITH

(Perforated bank stamp) Paid 9-11-28.

On reverse:

Rubber stamp endorsement, Bureau of Power and Light of the City of Los Angeles.

Bank stamp.

Objectors Exhibit 2-22, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

United States National Bank 16-18/12
N. E. Corner Eighth & Spring Streets

Los Angeles, Calif., Aug 21—1928 No.

Pay to the order of Lee R Bailey $1.72
one 72/100 Dollars

GOLDEN STATE GEM CO. OF NEV.
WALTER CALVIN SMITH

(Perforated bank stamp)—Paid 9-6-28.

On reverse:

Endorsed by Lee R. Bailey.

Two bank stamps.

Objectors Exhibit 2-23, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co.
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

No. 3072

Los Angeles, Calif., Sept—10 1928

Pay to the order of J. A. McIntosh & Co. $6.40

Six ..... 40/100 Dollars

Main Office

To The United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN.

(Shells pol.)

Bank stamp.

(Perforated bank stamp)—Paid 9-19-28.

On reverse:

Endorsed: J A McIntosh & Co by J Z Cameron.

Two bank stamps.

Objectors Exhibit 2-24, to Deposition of N. R. Dunn, 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co.
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

No. 3073

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of George Schmidt $3.00

Three ..... Dollars

Main Office

To The United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO
JOHN LAWRENCE SMITH
A. E. BOWEN

(to date)

Bank stamp.

(Perforated bank stamp)—Paid 9-20-28.

On reverse:

Rubber stamp endorsement, George Schmidt.

Bank stamp.

Objectors Exhibit 2-25, to Deposition of N. R. Dunn
7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3074
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of W. N. Fisher Co. $15.25

Fifteen ..... 25/100 Dollars

Main Office

To The 16-18
United States National Bank 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN

(To date in Full)

(Perforated bank stamp)—Paid 10-1-28.

On reverse:

Rubber stamp endorsement, W. N. Fisher Co.

Three bank stamps.

Objectors Exhibit 2-26, to Deposition of N. R. Dunn
7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3075
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Calkins Co. $3.64

Three ..... 64/100 Dollars

Main Office

To The 16-18
United States National Bank 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN

(Perforated bank stamp—Paid 9-19-28.

On reverse:

Rubber stamp endorsement, Calkins Company

One bank stamp.

Objectors Exhibit 2-27, to Deposition of N. R. Dunn 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3076
of Nevada
Telephone MEtropolitan 0318
726-28 San Pedro Street Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Chamber Commerce $12.50
Twelve 50/100 Dollars

Main Office
To The
United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN

ending Dec. 31-28

(Perforated bank stamp)—Paid 9-19-28.

On reverse:

Rubber stamp endorsement, Los Angeles Chamber of Commerce.

One bank stamp.

Objectors Exhibit 2-28, to Deposition of N. R. Dunn 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3077
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318 Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Calif. Compressed Gas Co. $6.50
Six 50/100 Dollars

Main Office
To The
United States National Bank 16-18 42
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN

(to date)

(Perforated bank stamp—Paid 9-19-28.

On reverse:

Rubber stamp endorsement, California Compressed Gas Co.

One bank stamp.

Objectors Exhibit 2-29, to Deposition of N. R. Dunn
7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3078
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Blake Moffitt Towne $4.95
Four 95/100 Dollars

Main Office
To The 16-18 GOLDEN STATE GEM CO.
United States National Bank 12 JOHN LAWRENCE SMITH
N. E. Corner Eighth and Spring Streets A. E. BOWEN
Los Angeles, California

5000 envelopes.

(Perforated bank stamp)—Paid 9-19-28.

On reverse:

Rubber stamp endorsement, Blake, Moffitt & Towne.

One bank stamp.

Objectors Exhibit 2-30, to Deposition of N. R. Dunn
7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3079
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Al Pochon $10.00
Ten Dollars

Main Office
To The 16-18 GOLDEN STATE GEM CO.
United States National Bank 12 JOHN LAWRENCE SMITH
N. E. Corner Eighth and Spring Streets A. E. BOWEN
Los Angeles, California

(Perforated bank stamp) Paid 9-22-20.

On reverse:

Bank stamp and endorsement in ink of Al Pochon.

Objectors Exhibit 2-31, to Deposition of N. R. Dunn 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co.
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

No. 3080

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Ballard & Ballard $7.50
Seven 50/100 Dollars

Main Office
To The United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

Golden State Gem Co.
John Lawrence Smith
A. E. Bowen

(Perforated bank stamp)—Paid 9-19-28.

On reverse:

Rubber stamp endorsement, Ballard & Ballard.

One bank stamp.

Objectors Exhibit 2-32, to Deposition of N. R. Dunn 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co.
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

No. 3081

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Arrow Chain Co. $41.75
Forty-one 75/100 Dollars

Main Office,
To The United States National Bank 16-18 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

Golden State Gem Co.
John Lawrence Smith
A. E. Bowen

(Perforated bank stamp)—Paid 10-1-28.

On reverse:

Two bank stamps, rubber stamp endorsement of Arrow Chain Mfg. Co.

Objectors Exhibit 2-33, to Deposition of N. R. Dunn 7-9-42. C. W. McClain, Notary Public.

Golden State Gem Co. No. 3082
of Nevada
726-28 San Pedro Street
Telephone MEtropolitan 0318

Los Angeles, Calif., Sept. 10, 1928

Pay to the order of Mahy Co. $5.00
Five..... Dollars

Main Office

To The 16-18
United States National Bank 12
N. E. Corner Eighth and Spring Streets
Los Angeles, California

GOLDEN STATE GEM CO.
JOHN LAWRENCE SMITH
A. E. BOWEN

(to date in full)

(Perforated bank stamp)—Paid 9-21-28.

On reverse:

Mahy & Co. endorsement in ink and bank stamp.

Gold [illegible] INDIVIDUAL LEDGER

[illegible]

[illegible]

Objector's Exhibit [illegible]-34 to Deposition of [illegible]

Walter Calvin Smith

OLD BALANCE	DATE	CHECKS IN DETAIL			DATE	DEPOSITS	BALANCE
			BALANCE BROUGHT FORWARD				
	AUG 16	1,312.22-	40.00-		AUG 16	9,223.00	7,870.78
7,870.78	AUG 17	255.00-					7,615.78
7,615.78	AUG 17	155.00-					7,460.78
7,460.78	AUG 18	107.75-	415.38-	164.25-			6,773.40
6,773.40	AUG 18	1,000.00-	69.00-				5,704.40
5,704.40	AUG 20	6.35-	100.00-	23.80-			
	AUG 20	25.00-					5,549.25
5,549.25	AUG 20		667.00-	78.00-			4,807.25
	AUG 21	14.85-	18.00-	5.00-			
4,807.25	AUG 21	7.50-	16.00-				4,745.90
4,745.90	AUG 21	80.10-					4,665.80
4,665.80	AUG 21	735.00-					3,930.80
3,930.80	AUG 22	8.00-					3,922.80
3,922.80	AUG 22	12.82-					3,909.98
3,909.98	AUG 23	178.59-					3,731.39
3,731.39	AUG 24	35.52-	4.30-	231.[illegible]			
	AUG 24	9.98-	16.90-				3,433.11
3,433.11	AUG 24	109.51-					3,323.60
3,323.60	AUG 24	10.00-					3,313.60
3,313.60	AUG 24	390.00-					2,923.60
2,923.60	AUG 25	6.71-	27.08-	28.82-	AUG 25		2,86[illegible].99
2,86[illegible].99	AUG 25	3.55-	5.00-				2,85[illegible]
2,852.44	AUG 27	347.92-			AUG 27		2,504.52
2,504.52	AUG 27	100.00-			AUG 27		2,404.52
2,404.52	AUG 29	50.00-	133.75-	335.00-			
	AUG 29	51.17-			AUG 29		1,834.60
1,834.60	AUG 30	7.50-	56.00-	98.36-			
	AUG 30	25.00-			AUG 30		1,647.74

Objector's Exhibit 2-35 to deposition of [illegible]

MAIN OFFICE

UNITED STATES NATIONAL BANK LOS ANGELES

2013

SUNDRY BALANCES

							1,047.74
1,047.74	AUG 31	2.65	34.00	15.92	AUG 31		1,59517
1,59517	AUG 31	50.00	50.00		AUG 31		1,49517
1,49517	AUG 31	300.00			AUG 31		1,19517
1,19517	[illegible]	54.00	51.1[illegible]	14.00	[illegible]		1,076.05
1,076.0[illegible]	[illegible]	55.00	6.[illegible]		[illegible]		1,015.05
1,015.05	SEP 4	100.00	450.00	50.00			
	SEP 4	5.00	15.83		SEP 4		39422
39422					SEP 4	1,000.00	1,39422
1,39422	SEP 5	10.00			SEP 5		1,38422
1,38422	SEP 6	120.00	36.90	1.72	SEP 6		1,225.60
1,225.60	SEP 6	491.48			SEP 6		73412
73412	SEP 7	178.50	25.00	22.65	SEP 7		50797
50797	SEP 11	25.78			SEP 11		48219
	SEP 12				SEP 12		
48219	SEP 13	2.10			SEP 13		480.09
	SEP 14	~~50.00~~		~~[illegible]~~			
	SEP 14	~~[illegible]~~		~~[illegible]~~	SEP 14		
480.09	SEP 19	3.64	4.95	12.50			
	SEP 19	6.50	7.50	6.00			432.00
	SEP 19	6.40					429.60
432.60	SEP 20	3.00			SEP 20		424.60
429.60	SEP 21	5.00			SEP 21		
424.60	SEP 22	10.00			SEP 22		414.60
	SEP 25	~~32.40~~					
	SEP 25	~~40.00~~					
	SEP 25				SEP 25		
[illegible]	[illegible]	41.7[illegible]	[illegible]		[illegible]		3[illegible]
[illegible]	[illegible]	[illegible]			[illegible]		7[illegible]
7.60	NOV 1	5.0			NOV 1		7.10
7.10	JUN 12	1.00					6.10
6.10	DEC 9	6.10	SERVICE CHGES		DEC 9		.00
	FEB 10				FEB 10	6.10	6.10

Objectors Exhibit 2-36 to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Beveridge VA 5056

In the District Court of the United States
For the Central Division, Southern District of California

In the Matter of Golden State Gem Company, Bankrupt. No. 13393-J, in Bankruptcy.

To Receiver of the United States Nat'l Bank and or one of his representatives or employees.

Whereas, Golden State Gem Company, Los Angeles, in the County of Los Angeles, and State of California, has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the Southern District of California.

These are to require you, to whom this summons is directed, personally to be and appear before Earl E. Moss, 667 Subway Terminal Bldg., one of the Referees in Bankruptcy of the said Court, at Los Angeles, on the 22nd day of April, 1932, at 9 o'clock in the forenoon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable Wm. P. James, Judge of said Court, and the seal thereof, at Los Angeles this 21st day of April, A. D. 1931.

R. S. ZIMMERMAN, Clerk.
(Seal) By L. B. FIGG, Deputy Clerk.

Return of Summons to Witness.

In the District Court of the United States for the..... District of.....

In the Matter of.....Bankrupt.

In Bankruptcy.

On this.....day of....., A.D. 19..., before me came....., of....., in the County of.....,

and State of....., and makes oath, and says that he did, on....., the.....day of ..... in the County of....., and State of....., with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceedings in bankruptcy named in said summons.

.....

Subscribed and sworn to before me this.....day of ....., A. D. 19.....

.....

and bring with you the account of the Golden State Gem Company of Nevada a corporation, and records and receipts showing in whose name certain jewelry merchandise described as "100 lbs zircons and 4000 lbs of sapphires" said property was held by said bank when it was shipped to said Bank from San Francisco, California by claimant, M. E. Heiser; also a record of the circumstances under which the Bank went out of possession of said property any and all statements of accounts, records, receipts, bills of lading in the name of M. E. Heiser, Golden State Gem Company of Nevada, a corporation, and/or Golden State Gem Company of California, a corporation.

*Matter in italics appeared in handwriting on original.

Objectors Exhibit 2-37. To Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Office of the Marshal of the Municipal Court, City of Los Angeles

Los Angeles, Calif., Mar. 14th, 1929

To Mr. U. S. Natl. Bank, 758 So. Spring St.

You will please take notice that all moneys, goods, credits, effects, debts due or owing, or any personal property in your possession or under your control belonging to the within defendant .....
or either of them, are attached by virtue of a writ of which

this is a copy, and you are notified not to pay over or transfer the same to any one but Chas. R. Thomas, Marshal of Municipal Court, City of Los Angeles, or some one legally authorized to receive the same, but to conduct yourself in accordance with the statutes made and provided. I also require of you a statement in writing of the amount of same.

CHAS. R. THOMAS,
Marshal of Municipal Court,
City of Los Angeles

By (name illegible),
Deputy.

Golden State Gem Co.
No. 122717
Municipal Court
City of Los Angeles
County of Los Angeles, California

E. A. Miller, Plaintiff, vs. Golden State Gem Co., of Nev/ a corporation et al., Defendant.

Writ of Attachment

U. S. National Bank, 758 So. Spring St.

SARAH B. DANNING,
416 Fay Bldg.
TU 4126.
Attorney for Plaintiff.

L. J. Meyberg
Vandyke 6089
Tucker 7329

J. A. Coleman Atty.
M. Heiser
→*Golden State Gem Co.*
Walter Calvin Smith
Australian American Gem Mining Co.

*Matter in italics in handwriting on original.

Objectors Exhibit 2-38 to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

In the Municipal Court, City of Los Angeles County of Los Angeles, State of California

No.....

Writ of Attachment

Demand $.....

E. A. Miller, Plaintiff vs. Golden State Gem Co., of Nev., a corporation, et al., Defendant.

The People of the State of California:

To the Sheriff or any Marshal or Constable of the County of Los Angeles, Greeting:

You are hereby commanded to attach and safely keep all the property of the above named defendant a number of sacks purporting to weigh about 4000 lbs. and said to contain uncut sapphires, value unknown, and on which storage charges have accumulated in our favor to the extent of about $100.00., in this County, not exempt from execution, or so much thereof as may be sufficient to satisfy plaintiff's demands, to-wit: Six Hundred Twenty-nine and no/100 ($629.00) Dollars with interest at 7 per cent per annum from March 1, 1929, and Seventy-five ($75.00) dollars, Attorney's fees, besides the costs, unless the said defendant shall give you the security required by Section 540 of the Code of Civil Procedure of the State of California; in which case you will take such security.

Witness the Honorable Presiding Judge of the Municipal Court, City of Los Angeles, County of Los Angeles, State of

California, attested by my hand and the seal of said Court this.....day of March, 1929.

W. S. DIXSMORE,
Clerk of Municipal Court City of Los Angeles, County of Los Angeles, State of California.

(Seal) By.....
Deputy.

Served
2:30 pm.
3/14/29
Return
made 3/19/29
J.A.S.

Matter in italics in handwriting on original.

Objector's exhibit 1 to deposition of Arlatt

21635

Colyear Van and Storage Co. Checking List

Lot No. _____ Location _____

Name Fra[illegible] B Cook

Hauled by Co Truck

Order No. C-11 Date Rec'd 6-9-82

1	Bag	Roof		1	
2	Bag	Roof	Weight	94	
3	Bag	Roof	Weight	105	
4	Bag	Roof	Weight	75	
5	Bag	Roof	Weight	111	
6	Bag	Roof	Weight	128	
7	Bag	Roof	Weight	116	
8	Bag	Roof	Weight	109	
9	Bag	Roof	Weight	136	
10	Bag	Roof	Weight	104	
11	Bag	Roof	Weight	122	
12	Bag	Roof	Weight	135	
13	Bag	Roof	Weight	177	
14	Bag	Roof	Weight	132	
15	Bag	Roof	Weight	104	
16	Bag	Roof	Weight	132	
17	Bag	Roof	Weight	82	
18	Bag	Roof	Weight	129	
19	Bag	Roof	Weight	121	
20	Bag	Roof	Weight	135	
21	Bag	Roof	Weight	131	
22	Bag	Roof	Weight	117	
23	Bag	Roof	Weight	155	
24	Bag	Roof	Weight	133	
25	Bag	Roof	Weight	130	
26	[illegible]			94	
27	Bag	Roof	Weight	140	
28	[illegible]			107	
29	Carton	[illegible]		112	
30	Carton	[illegible]		104	
31	[illegible]			131	
32	Box	Roof	Weight	[illegible]	
33	[illegible]		Weight	127	
34	Bag	Roof	Weight	103	
35	[illegible]			[illegible]	
36					
37					
38					
39					
40					

41					
42	1 Box				
43					
44	[illegible]				
45	[illegible]				
46					
47					
48					
49					
50					
51					
52					
53					
54					
55					
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66					
67					
68					
69					
70					
71					
72					
73					
74					
75					
76					
77					
78					
79					
80					

Received above goods from COLYEAR VAN & STORAGE CO. in good condition except as noted.

Checked out by _____ Name _____

Date delivered _____ Address _____

Out by _____ Carrier _____

Objector's Exhibit 2 to deposition of Warlatt

DUPLICATE

WAREHOUSE RECEIPT
AND CONTRACT

8/9-[illegible]
21838
No 1012
S 11

COLYEAR'S
VAN & STORAGE CO.

Franklin D. Roth Howard L. Woodruff

READ THIS CONTRACT

NOT NEGOTIABLE

POSITIVELY NO GOODS DELIVERED UNTIL ALL CHARGES ARE PAID

$1.75 $1.75
$8.80

No person is authorized to make any other agreement or condition on behalf of the company.
Received original receipt subject to above terms and conditions. COLYEAR'S VAN & STORAGE CO.

BY

SCHEDULE IF NOT CORRECT PLEASE REPORT IMMEDIATELY

No. 1	Bag	Rock	Weight 188#	No. 24	Bag	Rock	Weight 133#
2	Bag	Rock	" 94 (2 Bags in one 51# & 45#)	25	Bag	Rock	" 136
3	Bag	Rock	" 106 (Tin in Bag)	26	Bag	Rock	" 94
4	Bag	Rock	" 98 (Tin in Bag)	27	Bag	Rock	" 140
5	Bag	Rock	" 111 (Tin in Bag)	28	Bag	Rock	" 107
6	Bag	Rock	" 128	29	Carton	Rock	" 112
7	Bag	Rock	" 115	30	Carton	Rock	" 104
8	Bag	Rock	" 109	31	Box	Rock	" 131
9	Bag	Rock	" 136	32	Box	Rock	" 100
10	Bag	Rock	" 104	33	Box	Rock	" 127
11	Bag	Rock	" 142	34	Barrel	Rock	" 108
12	Bag	Rock	" 100	35	Barrel	Rock	" 188
13	Bag	Rock	" 147				
14	Bag	Rock	" 138				
15	Bag	Rock	" 104				
16	Bag	Rock	" 138				
17	Bag	Rock	" 82				
18	Bag	Rock	" 129				
19	Bag	Rock	" 121				
20	Bag	Rock	" 138				
21	Bag	Rock	" 131				
22	Bag	Rock	" 117				
23	Bag	Rock	" 133				

Objector's Ex. 2-A to Dep. of J. A. Seelye

UNITED STATES NATIONAL BANK LOS ANGELES

SUMMARY BALANCES

OLD BALANCE	DATE	CHECKS IN DETAIL	DATE	DEPOSITS	BALANCE
			SEP 6'28		1,043.36*
1,043.36	SEP 6'28	629.23-	SEP 6'28		414.13*
414.13	SEP 12'28	10.00-	SEP 12'28		404.13*
[illegible]	SEP 28'28	[illegible]	[illegible]		[illegible]
373.06	OCT 8'28		OCT 8'28	33.33	406.39*
406.39	OCT 17'28	60.90-	OCT 17'28		345.49*
345.49	NOV 7'28		NOV 7'28	25.00	370.49*
[illegible]	DEC 24'28		[illegible]		[illegible]
[illegible]	DEC 28'28		[illegible]		[illegible]
1,025.49	JAN 9'29	75.62-	JAN 9'29		949.87*
1,025.49					
[illegible]	JAN 31'29		[illegible]		974.87*
974.87	MAR 5'29	213.00-	MAR 5'29		761.87*
761.87	MAR 6'29		MAR 6'29	25.00	786.87*
[illegible]	[illegible]		[illegible]		[illegible]
[illegible]	MAY 1'29		[illegible]		[illegible]
836.87	JUN 5'29		JUN 5'29	25.00	861.87*
861.87			JUL 5'29	25.00	886.87*
886.87			[illegible]		[illegible]
25.00	DEC 4	12.00-	AUG 16'29	[illegible]	25.00*
			DEC 4		13.00*

Tran to New Sheet
V. 10-31

Objectors Exhibit 3 to Dep. of C. B. Marlett, 7/9/42. C. W. McClain, Notary Public.

Francis B. Cobb

Attorney at Law

760 Subway Terminal Building

Los Angeles, California

Phone MUtual 0416

June 28th, 1933.

Colyear's Van & Storage Co., 415 So. San Pedro Street, Los Angeles, Calif.

Gentlemen: Will you kindly issue a new warehouse receipt covering thirty-five (35) bags and cartons of rocks which are now stored with you under your warehouse receipt No. 21635 on your order No. 511, to Howard L. Woodruff upon the payment of your charges to date.

Yours very truly,

FBC:DH FRANCIS B. COBB.

[Objectors' exhibit 1 to the deposition of C. N. Olson, designated portions of reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company, is identical with objectors' exhibit NN, the designated portions of which appear at page 1046.]

Objectors Ex. 1-B to Dep. of J. A. Seelye, 7/8/42. C. W. McClain, Notary Public.

In the Superior Court of the State of California
In and for the County of Los Angeles

Writ of Attachment.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., et al. Defendants.

The People of the State of California to the Sheriff of the County of Los Angeles, Greeting:

Whereas, the above entitled action was commenced by Plaintiff in the Superior Court of the County of Los Angeles to recover from the Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada corporation, the sum of $1069.40.....Dollars lawful money of the United States, besides interest at the rate of 7 per cent per annum from the 9th day of April, 1929. and costs of suit; and an affidavit for, and undertaking on, attachment, have been filed as required by law.

Now, you are commanded to attach and safely keep all property of such Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, within your County, not exempt from execution, or so much thereof as may be sufficient to satisfy the Plaintiff's demand against such Defendants unless such Defendants give you security, by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand against such Defendants, besides costs, or in an amount equal to the value of the property of such Defendants, which has been or is about to be attached; in which case you will take such undertaking, and hereof make service and return.

Witness the Honorable and Presiding Judge of the Superior Court, attested by my hand and the seal of said Court, this 19th day of April, 1929.

Seal of Superior Court

L. E. LAMPTON, County Clerk.
By W. D. BUCKLEY, Deputy.

Objectors Ex. 1-A and 1-B to Dep. of J. A. Seelye 7/8/42. C. W. McClain, Notary Public.

To the Sheriff of Los Angeles County:

Under and by virtue of a within Writ of attachment, you will please attach all of the following described personal property, located at 726-728½ South San Pedro Street, Los Angeles, California, to-wit:

1 pipe organ coral
4 oil paintings
2 time clocks
4 silver candlesticks
5 silver vases
1 silver salt shaker
1 pr. spectacles
2 shell ink wells
1 American Adding Machine
2 Oliver typewriters (old)
1 large crystal ball with stand
1 small crystal ball and stand
1 large crystal ball without stand
1 Agate perfume bottle with cork
1 case of watch crystals
22 wrist watches
8 rings in cases
26 Kunsite stones (cut)
2 bbls carborundum
1 large drop press
1 large microscope
2 small magnifying glasses
4 gas heaters
4 gas plates and gas jets
2 rolls carborundum cloth
2 looking glasses
1 Goodell press drill (hand)
1 step ladder
1 typewriter desk
1 tape wrapping machine
100 pr. *Immitation* beads

Also 4,000 pounds more or less of rough sapphire stones, and 1000 oz. of Zircon stones located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

Bank

You will please put a Custodian in charge at 726 South San Pedro Street, Los Angeles, California, at plaintiff's cost and remove property from the United States National Bank for safe keeping. no chattel mtg on above.

J. A. COLEMAN,
Attorney for Plaintiff.

Matter in italics in handwriting on original.

Golden State Gem Co.

No. 246-469, Superior Court, County of Los Angeles

Leonard Woodruff vs. Golden State Gem Co., et al.

Writ of Attachment

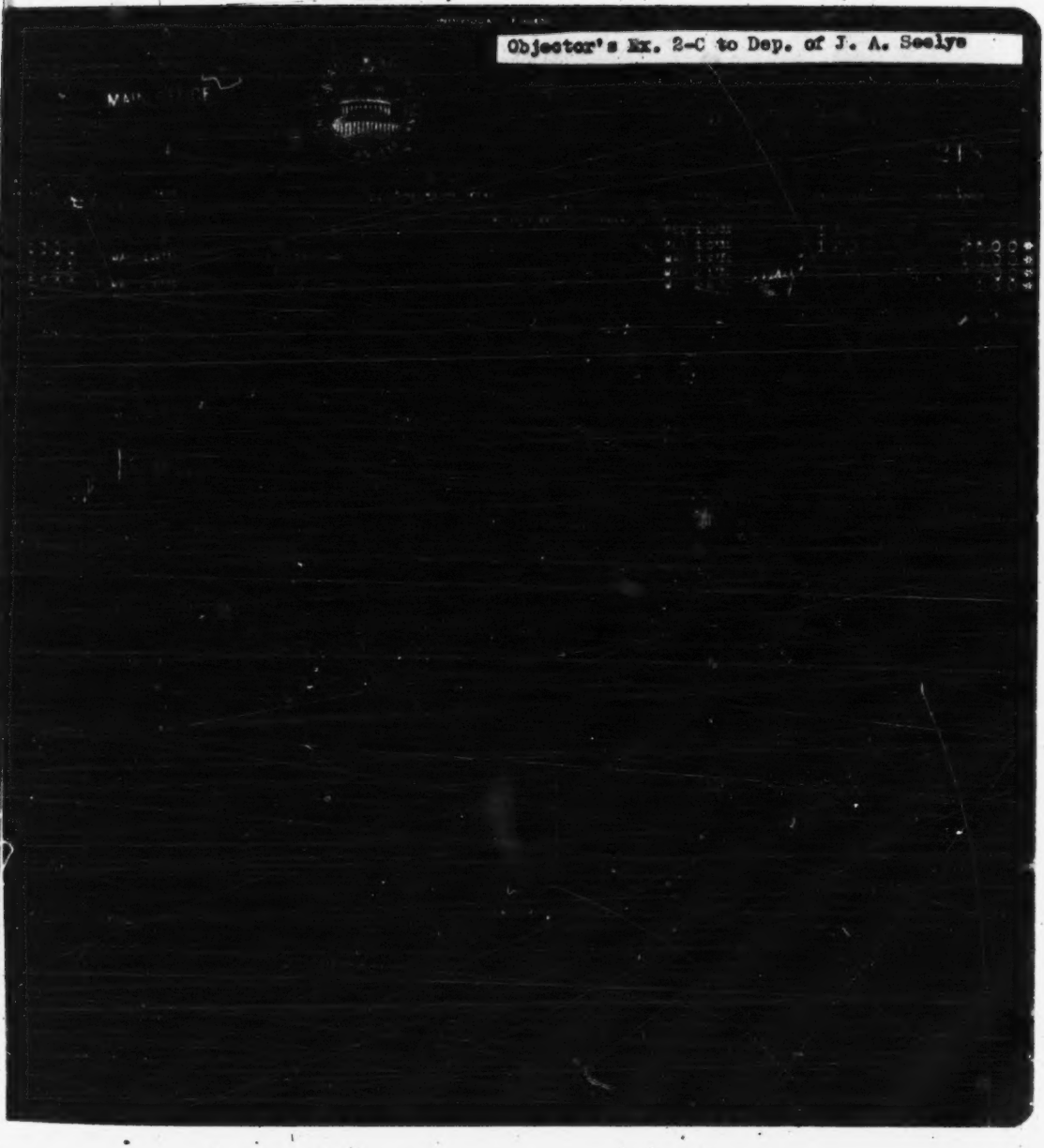
12/55 p.m.
4/19/29
JAS

J. A. COLEMAN,
458 South Spring Street,
Attorney for Plaintiff.

Matter in italics in handwriting on original.

Objector's Exhibit 2-B to Dep. of J. A. Seelye

Objector's Ex. 2-C to Dep. of J. A. Seelye



Deposition of M. E. Heiser.

In the United States District Court in and for the Eastern District of Oklahoma. In the Matter of the Bankruptcy of Leonard J. Woodruff, Bankrupt (Debtor). No. 7623—Bankruptcy.

Be It Remembered, that on Tuesday, the 26th day of August, 1941, at 10 o'clock A.M., pursuant to Notice of Intention to Take Deposition, hereto annexed, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, California, personally appeared before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, M. E. HEISER, a witness called on behalf of the debtor, Leonard J. Woodruff, in the above-entitled action.

T. W. Champion, Esquire, and Louis A. Fischl, Esquire, represented by Oscar Samuels, Esquire, and Tevis Jacobs, Esquire, appeared as attorneys for the debtor, Leonard J. Woodruff; and Leonard J. Meyberg, Esquire, appeared as attorney for M. E. Heiser.

The said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that the said deposition should be recorded stenographically by Frank L. Hart, a competent official shorthand reporter and a disinterested person, and thereafter transcribed by him into longhand typewriting, to be read to, or by, the said witness, who, after making such corrections therein as may be necessary, will subscribe the same.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

It was further stipulated that if the witness should be instructed not to answer questions propounded by counsel, in the absence of the Notary Public, it shall be deemed that the Notary Public has so instructed the witness to answer, but that he still refuses to answer.

Mr. Samuels: Will you swear the witness, please. Will you raise your right hand, kindly, Mr. Heiser and be sworn?

(Thereupon the Notary Public administered the statutory oath to the witness.)

Mr. Samuels: May we have this stipulation, Mr. Meyberg, that the Notary can be excused from attending during the taking of the deposition; and that should the witness refuse to answer any question upon the advice of counsel the Notary will have been deemed to have instructed the witness to answer and the refusal reiterated by the witness?

Mr. Meyberg: We will so stipulate, provided under any such circumstances you will notify the witness of this particular fact and he be given a second opportunity to answer.

Mr. Samuels: That will be perfectly agreeable.

Mr. Meyberg: So that he will know what the circumstance is, just as though she were in here.

Mr. Samuels: That will be agreeable.

Mr. Reporter, I can give you the title of court and cause to be returned with the deposition. That is a certified copy of the notice.

M. E. HEISER, a witness called on behalf of the debtor, Leonard J. Woodruff, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. Samuels.

Mr. Samuels: Q. Mr. Heiser, you are the M. E. Heiser who has filed a claim in the matter of the bankruptcy of Leonard J. Woodruff, bankrupt (debtor), No. 7623—Bank-

ruptcy, pending in the United States District Court in and for the Eastern District of Oklahoma?

A. Yes, sir.

Q. When did you first come to San Francisco, Mr. Heiser?

A. The end of 1914 or the early part of 1915. That was a long time ago, Mr. Samuels, but I think that is correct.

* * * * *

Q. And did you come to San Francisco at that time because of the Panama-Pacific Exposition which had opened, or which was about to open in the City of San Francisco?

A. Yes.

Q. Were you in any wise connected with such exposition by way of display or sale of merchandise, or otherwise?

* * * * *

A. Yes.

Q. What particular feature of those mentioned by me was your connection with the Exposition?

Mr. Meyberg: May I have that question read?

(Pending question read.)

Mr. Meyberg. Those mentioned by you as counsel. I did not hear you mention any particular feature.

Mr. Samuels: Was it to sell, or exhibit, or some other connection? Don't take this down unless counsel wishes.

Mr. Meyberg: I have no objection to his answering that if he knows.

A. I was generally exhibiting all classes of gems. I had a large cutting plant, exhibiting cuttings also, and I had the only free permit to sell gems at the Exposition. All the others were in bond.

Mr. Samuels: Q. When you refer to gems, what type of gems have you in mind?

A. Sapphires, opals, jades, and zircons.

* * * * *

Mr. Samuels: Q. Were you here in the capacity of official representative of any government?

A. No.

Q. From whom did you procure this exclusive privilege of selling the gems you have referred to?

* * * * *

A. Could I have that question read, please?

(Pending question read.)

A. I can't recollect now. That is going back twenty odd years, Mr. Samuels.

Mr. Samuels: Q. From any one official connected with the Exposition?

A. That I couldn't recollect.

Q. Where was your space in the Exposition where you conducted your sales located, and your cutting, I believe you stated?

A. In the Australian Building.

Q. What was the size of the space if you recollect it, approximately, of course?

A. Well, I couldn't give you the exact size, but it was in the corner of the Australian Building. It was not exactly a square building. We had a complete corner. I would say it was three times the size of this room.

Q. You mean both by length and width of this room?

A. Yes. It may have been a little larger or a little smaller. Offhand that is a long time ago to remember space, Mr. Samuels, and it is impossible for a man to give the exact measurements of a building and remembering since 1914.

Mr. Meyberg: He is just asking you for the best of your recollection, Mr. Heiser.

A. Well, I don't recollect.

Mr. Samuels: Suppose you and I determine the dimensions of this room so that the record will indicate something on it.

Mr. Meyberg: You know the size of the room, about.

Mr. Jacobs: It is about 18 or 20 feet.

Mr. Samuels: Suppose you step it off again.

Mr. Meyberg: What is it—square?

Mr. Samuels: It is a rectangle. Don't you think so?

Mr. Meyberg: I am not a very good judge.

Mr. Samuels: How many feet have you got for the length of the room?

Mr. Jacobs: It is between 18 and 20 feet.

Mr. Samuels: We will put down 18 to 20 feet in length, and that will allow some latitude. And now will you take the width, kindly.

Mr. Jacobs: I think it is the same—it is about 16 or 17 feet; it is a little narrower.

Mr. Samuels: So about 16 or 17 feet in width.

Mr. Meyberg: About 18 to 20 feet by 16 to 17 feet he says.

Mr. Samuels: What?

Mr. Meyberg: About 18 to 20 feet by 16 to 17 feet—is that about it?

Mr. Jacobs: Yes, that is about it.

Mr. Meyberg: What is the height, about?

Mr. Samuels: Well, the height—

Mr. Meyberg: You are not interested in the height?

A. Why don't you step off the height, too?

Mr. Samuels: Q. Did you have any assistant there?

A. Yes.

Q. And what was his name?

A. I couldn't recollect.

Q. It was a "he"?

A. I had several. I couldn't recollect their names.

Q. Do you recollect the name of any one of them?

A. No, sir.

Q. When did you commence your operations in the Exposition?

A. I think it was the opening day.

Q. The opening day?.

A. Pardon me. You mean commence the operations of demonstrating or cutting, or what?

Q. Whatever your operations were in the subjects allotted to you.

A. We were there from the beginning or opening.

Q. From the beginning of the Exposition?

A. Yes.

Q. And when did you discontinue those operations?

A. Before it closed.

Q. How long before it closed?

A. That I couldn't tell you.

Q. Can you approximate it?

A. No, sir.

Q. Can you state how long you were operating there?

A. No; I couldn't.

Q. You can't approximate it within a month or two months or three months?

A. No, sir.

Q. What prompted you to discontinue your operations prior to the close of the Exposition?

* * * * *

A. I can't recollect now.

Q. Where did these gems come from?

A. Australia.

Q. Did you bring them with you when you came into the United States?

* * * * *

A. They came from Australia.

Mr. Samuels: That is not an answer to the question I asked you.

Mr. Meyberg: Read the question, Mr. Reporter.

Mr. Samuels: You answered that question before.

(Pending question read as follows:

"Q. Did you bring them with you when you came into the United States?")

A. No.

Q. Did they precede your arrival here or follow it?

A. No, they came ahead of me.

Q. By whom were they shipped?

Mr. Meyberg: If you know.

A. I dont know exactly who they were shipped by. They were shipped through the Government—one of the Government agents, but I could't say which one it was now. As I said before, it was twenty odd years ago.

Mr. Samuels: Q. It was your private property?

A. Yes, sir.

Q. Can you explain how the Government shipped your private property?

* * * * *

A. No, I can't recollect now.

Q. You can't recollect?

A. That was twenty-six years ago.

Q. I am showing you, Mr. Heiser, a transcript of the testimony given in the case of Heiser vs. Woodruff in the District Court of the United States for the Southern District of California, Central Division, in an action No. 7,256-C-Law, and I am commencing at page 224.

* * * * * *

"Q. For how long a period of time have you actually done that yourself?

"A. I represented the Queensland Government at the Panama Exposition, as their expert cutter for demonstration, in 1915, in San Francisco, cutting, to demonstrate how the gems were cut and how they were mined."

Does that refresh your recollection?

A. Yes, sir.

Q. Did you represent the Queensland Government?

A. I represented the Queensland Government with gems in this State.

Q. What do you mean by your statement that you represented the Queensland Government with gems in this State?

A. Well, they selected me.

Q. Who are "they"?

A. The Government—the Governor of Queensland, to be exact, selected me to come over here with gems to that exhibit.

Q. What official of the Government selected you?

A. It was done at Government House. I was appointed by a committee. I couldn't tell you who the men were now.

Q. Were you given any official designation?

A. No. I didn't want an official designation.

Q. Did you have any governmental credentials of any kind?

A. No. All I had was a pass to the Exposition.

Mr. Samuels: Read that answer.

(Witness' answer read.)

Q. Wasn't a pass to the Exposition given to any person, firm or corporation, that had space in the Exposition?

Mr. Meyberg: That is objected to as calling purely for a conclusion of the witness.

Mr. Samuels: That does not call for his conclusion. That calls for his knowledge—if he knows.

Mr. Meyberg: If you know you can answer; if you know that fact, you may answer.

A. No, I don't know it.

Mr. Samuels: Q. Am I to understand from you that the reason you procured this pass was because you were an official representative of the Queensland Government?

A. No, I didn't say that I was an official of the Queensland Government.

Q. What was the reason for your procuring that pass?

A. Because I had more gems than any other man in Queensland, and they sent me over to represent them, and when I was here I was supposed to have free space, free power and light, and free access to and from the grounds and building.

* * * * * *

A. I received the pass because I was cutting stones in the Australian Pavilion.

Mr. Samuels: Q. Is it not a fact within your actual knowledge, Mr. Heiser, that every person, firm or corporation which displayed any merchandise or product at the Exposition, or which had any space there for any other purpose as a vendor or otherwise, had a pass to the Exposition?

Mr. Meyberg: Now, answer that question, if you know.

A. That I don't know.

Mr. Samuels: Q. What was the extent of these gems which arrived from Australia—the quantity of them?

A. What gems have you reference to? What particular class of gems have you reference to?

Q. The gems which arrived from Australia, and which were shipped, as you stated, by some person for or on behalf of the Government, and which were to be used by you in connection with your display and your operations in the space mentioned by you?

A. There was a very large quantity. I couldn't tell you the exact amount. It ran to several tons.

Q. Several tons?

A. Yes, sir.

Q. In one shipment?

A. That I couldn't say. I think they came over in several shipments. They came over before the Exposition, if I remember correctly.

Q. Did they all arrive before the Exposition?

A. I am not sure. I think a box came a few weeks after. I am not positive of that, Mr. Samuels. I couldn't say for sure; I am not certain.

Q. And when did the first shipment arrive with relation to the opening of the Exposition?

A. That I couldn't tell you, sir. I haven't any recollection of it.

Q. Can't you tell us whether it was two months or three months or four months before that?

A. I think it came ahead of me—before I arrived from Australia. It was on a ship ahead of me, I think, but I am not positive?

Q. When did you arrive?

A. The exact date I couldn't tell you, sir.

Q. Who was here to receive the shipment on your behalf, if a shipment arrived prior to your entry into the United States, or the time you reached San Francisco?

A. I couldn't tell you who. It was some one designated by the Australian Pavilion exhibit; somebody in charge of that would have received it, but I couldn't tell you who it was, or when.

Q. When you say that, is that your deduction or knowledge?

A. That is what I assume.

Q. You have no knowledge of that?

A. No, sir.

Q. Then you do not know who was here, or who actually did receive any such shipment?

A. No; that is right, sir.

Q. You have a recollection, have you, of receiving a subsequent shipment yourself?

A. How do you mean, a subsequent shipment?

Q. You arrived here at a certain time, did you not?

A. That is right.

Q. You stated you believe one shipment at least reached here after your arrival. Have you a recollection of receiving that shipment, or any other shipment which arrived here after the time you reached San Francisco?

A. Well, I have a hazy recollection that there was another large quantity came in a couple of weeks after we started, but I wouldn't be sure. It was quite a few years ago, Mr. Samuels, and it is a tax on a man's memory to remember that far back.

. . . . . .

Q. Of this several tons of gems you referred to how much was industrial sapphires? And I believe we may refer to it as corundums—is that correct?

. . . . . .

(Pending question read as follows:

"Q. Of this several tons of gems you referred to how much was industrial sapphires?")

A. I can't recollect.

Q. Was it more than one ton?

A. I can't recollect. I should think so, but I couldn't recollect, Mr. Samuels.

Q. To the best of your knowledge and approximation? I do not expect you to give me the pounds, Mr. Heiser.

A. No, I couldn't right offhand.

Q. Were the industrial sapphires a larger portion of the aggregate shipments than any other type of gems?

A. I couldn't recollect.

Q. Then am I to understand that of the several tons of gems, commercial gems could have preponderated in quantity?

A. That I couldn't remember, sir.

* * * * *

Q. Do you know what other Australian firms displayed like material—like gems in the Australian Building, and which gems originated in or from Australia?

A. No, I couldn't remember now, sir.

Q. Do you know whether or not your name appeared in the official catalog of exhibitors at the Exposition?

A. No.

Mr. Meyberg: Wouldn't the catalog be the best evidence of that?

Mr. Samuels: I asked him first if he knows whether it showed his name, and then I will show it to him in a moment.

A. No, I don't know.

Q. Do you know approximately the number of Australian firms which displayed like Australian products or similar Australian products?

A. No, I haven't any recollection.

Q. You have no recollection of that at all?

A. No.

Q. Did you know a person by the name of H. Bambrick, of Sapphiretown, Queensland?

A. No. The name seems familiar, but I can't recall it, sir.

Q. Did you know a person by the name of V. Bambrick, of the same place?

A. No, sir, I can't place it.

Q. Did you know a person by the name of E. Burford, of Sapphiretown, Queensland?

A. No, I can't place the name.

Q. Do you recollect whether or not any one of the three persons named by me had an exhibit of like or similar material in the Australian exhibit?

A. That I couldn't say before the Australian Pavilion closed.

Q. What is that?

A. That I couldn't say before the Australian Pavilion closed. They might have come after my time.

Q. Did you know a person by the name of C. W. Chick, of the same location?

A. No, I can't place him.

Q. Did you know a person by the name of I. G. Cousen, of the same location?

A. I. G. Cousen?

Q. Yes.

A. No. It is very hazy. I can't remember it, sir.

Q. Was there an exhibit there by the Department of Mines, of Brisbane, Queensland?

A. Yes.

Q. You remember that, do you?

A. That is where my exhibit was; that was my exhibit. I had all the gems in there.

Q. You had all the gems in there?

A. In the Queensland exhibit, yes.

Q. In the Department of Mines?

A. Under the Department of Mines, yes.

Q. I will read the different items that were exhibited by the Department of Mines, and I will ask you to identify what were yours. First is antimonite—was that yours?

A. No.

Q. The next was limestone—was that yours?

A. No.

Q. The next was copper ores?

A. No.

Q. The next was coal?

A. No.

Q. The next was chromite?

A. No.

Q. The next was pottery and fire clay?

A. No.

Q. The next was coke?

A. No.

Q. The next was gold ores?

A. No.

Q. The next was graphite?

A. No.

Q. The next was iron ores?

A. No.
Q. The next was magnesite?
A. No.
Q. The next was manganese ore?
A. No.
Q. The next was molybdenite?
A. No. Mine were only gems.
Q. I have not finished. The next was molybdenite?
A. No.
Q. The next was wolfram?
A. No.
Q. The next was tin ores and tin ingots?
A. No.
Q. The next was silver-lead-zinc ores?
A. No.
Q. The next was bismuth ores?
A. No. That might have been taken after I left the Exposition—that list.

Mr. Meyberg: He has not asked you that, Mr. Heiser.

A. I beg your pardon.

Mr. Samuels: Q. I will show you this catalog, and I have referred to page 31 thereof, and ask you whether or not you can observe—and I am showing you the particularization of the various items exhibited by the Department of Mines—any item which was of the character of your jewels or material.

(Catalog exhibited to witness.)

A. No, I can't see anything there.

Mr. Meyberg: May I see the book, please?

Mr. Samuels: Certainly.

(Catalog handed to Mr. Meyberg.)

Mr. Samuels: Q. Do you still think, then, that your exhibit was a portion of the Department of Mines' exhibit?

A. Yes, sir.
Q. How do you explain that?
A. Well, Percy Marks—

Mr. Meyberg: Just a minute. May I ask you, Mr. Samuels—

A. That is not precious metals.

Mr. Meyberg: Just a minute. The heading on the page that you showed the witness—of course, this book was not displayed to me before it was read by you, or before it was shown to the witness—

Mr. Samuels: That is correct.

Mr. Meyberg: But over the names that you read it says, "Foreign Governments, Department of Mines and Metallurgy."

Mr. Samuels: You are looking at "Minerals and Stones and their utilization."

Mr. Meyberg: Group 153.

Mr. Samuels: I am coming to that. I am going to give you every group of gems on the subject before I get finished. We will introduce the entire feature of that in the record.

Mr. Meyberg: Now, don't take any advantage of the witness.

Mr. Samuels: Don't say that to me, Mr. Meyberg.

Mr. Meyberg: Let me finish the statement. I am sure you are not intentionally doing that, but nevertheless it can be done wholly without your intention. You are showing the witness page 31 of a book from the Mechanics Mercantile Library called "Panama-Pacific International Exposition, Official Catalogue of Exhibitors."

Mr. Samuels: I am showing him this portion (indicating). Here you will find the official catalog (indicating). The rest of it is not pertinent to this issue at all. It is purely historical and descriptive.

I will ask another question.

Mr. Meyberg: You go ahead while I take a look at this catalog.

Mr. Samuels: I will ask this question.

Q. You saw that catalog, did you not, on sale at the Exposition?

A. This catalog?

Q. A catalog of the exhibitors at the Exposition?

A. I couldn't recollect.

Q. You couldn't recollect that?

A. No.

Q. Do you recollect whether or not your name appeared anywhere in a catalog of the exhibitors displaying wares at the Exposition?

A. The best recollection I have of that, sir, is that the Australian Government took moving pictures of the gem cutting at that Exposition, and my stand and my men were all taken in the movie cutting gems, and it was displayed at the Australian Pavilion in the Queensland exhibit.

Mr. Samuels: I move the answer be stricken as non-responsive.

A. It was displayed all over Australasia.

Mr. Samuels: Just a moment, if you will, please. I move that answer be stricken as non-responsive. Mr. Reporter, I will ask you to repeat the question to the witness, and I will ask you to answer the question, Mr. Heiser.

(Pending question read as follows:

"Q. Do you recollect whether or not your name appeared anywhere in a catalog of the exhibitors displaying wares at the Exposition?")

A. No, I don't know.

Mr. Meyberg: You can go right ahead.

Mr. Samuels: No, I want to finish this. You certainly have a right to examine the book and look at it. We will reproduce the portion of the catalog in the record which specifies the exhibitors in the Australian Pavilion.

Q. Did you have to pay, or did you pay in connection with your space for your operations therein or your exhibit—

A. No.

Mr. Samuels: One moment, please, until I complete the question.

Q. (Continuing:) Did you have to pay any consideration to the Exposition Company or any percentage of your sales?

A. I can't recollect now.

Q. You have no recollection of that at all?

A. No, sir.

Q. You sold, did you not, to the general public at the Exposition—

A. Yes, sir.

Q. (Continuing): —some of the stones which were on exhibit there at your stand?

A. Yes, sir.

Q. That was one of the purposes of your occupying or operating your stand, is that correct?

A. Yes.

Mr. Samuels: Did you get the witness' answer, Mr. Reporter?

(Record read.)

Q. Do you know the extent of your sales during the period of time that you were there—of course, approximately?

A. No, sir.

Q. You cannot state within any limits at all?

A. No, sir.

Q. Whether they were $1,000.00 in the aggregate, or more or less?

A. No, sir.

Q. You can't answer that?

A. No, sir.

Q. How many months would you say you were operating there?

A. I couldn't recollect today, sir.

Q. Three months?

A. I couldn't say.

Q Do you know how long the Exposition was open?

A. For sure, no.

Q. What is your best recollection on the subject?

A. I couldn't say.

Q. You have no recollection at all?

A. Not on that, no.

Q. Were you at the Exposition and at this stand more than a month?

A. Oh, I think so.

Q. You only think so? You have no certain knowledge of that?

A. No, I am not sure.

Q. What is your best belief as to that—was it two months?

A. I couldn't say, sir.

Q. You have no belief on the subject at all?

A. I am not sure.

* * * * *

Mr. Samuels: Q. Did you know a man by the name of D. Emonson, of Rubyvale, Queensland?

A. No, I don't know him.

Q. Did you know a firm by the name of Frasers, Ltd., of Brisbane, Queensland?

A. I have a recollection of Frasers, yes They were exhibiting their exhibit, I think.

Q. What did they exhibit according to your recollection?

A. Opals, sapphires, or zircons. I am not positive on that. I think it was opals, sapphires and zircons.

Q. Frasers, Ltd. is a very large firm, is it not?

A. No.

Q. It was a small firm?

A. Yes. It was a retail store.

Q. What?

A. It was a retail store.

Q. It was a retail store?

A. Yes, sir.

Q. And by comparison with your exhibit Frasers, Ltd., was smaller?

A. It was just a little showcase.

Q. It was just a little show-case?

A. That is according to the best of my knowledge.

Q. And do you recall where in this Australian Pavilion Frasers, Ltd. was located by relation to yours—the exhibit or the space?

A. No, I couldn't exactly tell you, sir.

Q. Did you know a person by the name of A. Holland, of Rubyvale, Queensland?

A. No, I don't think so.

Q. Did you know a person by the name of T. Holland, of Sapphiretown, Queensland?

A. No, I don't know any one by that name.

Q. Did you know a person by the name of W. Holland, of Sapphiretown, Queensland?

A. No, I don't remember those men.

Q. Did you know a person—

A. If I knew them I wouldn't remember it now. I don't remember knowing them.

Q. Did you know Percy Marks, of Sydney, New South Wales?

A. Yes, I knew him personally.

Q. How large an operator was he?

A. Quite a big man.

Q. Did he have an exhibit at the Exposition?

A. Yes, but it was under bond; it was a bonded exhibit.

Q. What do you mean by that?

A. He was not allowed to sell there.

Q. I understand—

A. And if I may say—

Mr. Samuels: No. I think you have answered the question.

A. I beg your pardon.

Mr. Samuels: Unless you have some explanation to make.

A. When you read to me the men from Sapphiretown, Queensland, I don't think those men were here. I think they were men who just sent samples in for sale. I don't think any of those men were here or I would have remembered their names. They might have sent a bag of sapphires of one ounce, two ounces, or five ounces.

Mr. Meyberg: Exhibits under glass?

A. Yes.

Mr. Samuels: Q. Did you not observe the names of individuals in proximity to or within the space of the Australian exhibits?

A. I wouldn't recollect that now, sir.

Q. But they were not posted?

A. That I couldn't say, sir.

Q. You can't say that?

A. No.

Q. What did Marks display?

A. Opals and zircons, and I think he had some sapphires, too. I am not positive whether he had sapphires, but he had opals and zircons.

Q. Cut or rough?

A. Both, but he had very few rough. The majority were cut, if I remember correctly, but I couldn't say for sure now, Mr. Samuels.

Q. Incidentally were any of your gems cut when they came here, or were they in the rough?

A. Those that were shipped by the Queensland people were all rough, and I brought a little parcel in of cut stones, but I couldn't tell you what size, but the custom people have a record on that. I paid the custom on it.

Q. On the cut stones?

A. Yes, but it was only a little bit of stuff, sir.

Q. By "little bit," what do you mean?

A. Oh, two or three hundred carats—just samples—because we had the stones and we cut it from there.

Q. Are you willing that the records of the Custom House be made available to us for examination?

* * * * *

Mr. Samuels: Q. How much space did Percy Marks have at the Australian Pavilion?

A. Several show-cases. I couldn't tell you the exact amount.

Q. Simply a show-case?

A. Several show-cases.

Q. Several show-cases?

A. Yes, sir.

Q. Did you know the firm of O. McIntyre & N. Flynn, of Rubyvale, Queensland?

A. No.

Q. Did you know a man by the name of W. Moran, of Sapphiretown, Queensland?

A. No, I can't recollect having known him.

Q. Did you know a man by the name of L. Newsome, of the same location?

A. No, I can't recollect him.

Q. Did you know a man by the name of J. S. Nisbet, of the same location?

A. Recollect him from where? Where would I recollect him from?

Q. When I say that I mean Sapphiretown, Queensland.

A. The name is familiar to me, but I just can't recall him, Mr. Samuels.

Q. Do you know what product he dealt in?

A. No, I couldn't say now. The name is familiar.

Q. For your information he dealt in sapphires, cut and rough. Does that refresh your recollection?

A. No.

Q. Did you know a man by the name of J. Peterson, of the same location?

A. No.

Q. Did you know a man by the name of D. Sheppard, of the same location?

A. No.

* * * * *

Q. Has "The Story of the Panama-Pacific International Exposition", by "Frank Morton Todd", come to your attention, Mr. Heiser?

A. I have never seen it, I don't think, Mr. Samuels.

Q. I am referring to what is designated on the title page of Volume III, "The Story of the Exposition, being the official history of the International celebration held at San Francisco in 1915 to commemorate the discovery of the Pacific Ocean and the construction of the Panama Canal," by Frank Morton Todd, in five volumes. The volume I am about to read from being Volume III, published for the Panama-Pacific International Exposition Company.

* * * * *

Q. To refresh your recollection, Mr. Heiser—would you like to see a portion of this exhibit, Mr. Meyberg? It is rather interesting—I am reading from the bottom of page 250. After referring to the mineral exhibits, naming them, it is stated:

"This profusion went beyond metals. There were diamonds, rubies, sapphires, garnets, zircons, and opals; and the opal was there in its glory, from Lightning Ridge and Whitecliffs in New South Wales. There was $64,000 worth of it, and apparently $64,000 will buy quite a few opals in Australia. They were in all shades of this changing and beautifully variegated gem, and in sizes large enough for harness ornaments; light orientals, and magnificent big, black and crimson stones of a darkly burning luster. And some had superstitions attached which gave them added value—advertising value. People reveled in the sight of them and bought them plentifully."

Now, with that before you, is it not the fact that other exhibitors of opals and sapphires sold to the public in the Australian Pavilion their wares on display?

A. I didn't know what happened after I left, sir.

Q. I am talking about the period of time that you were there?

Mr. Meyberg: What is the question?

Mr. Samuels: Read the question to the witness.

(Pending question read.)

A. That doesn't say when they were sold—that which you read to me doesn't say when they were sold, sir.

Mr. Samuels: I didn't ask you that. I ask that the answer go out as non-responsive.

Q. All I asked you was whether or not during the time you were exhibiting—

Mr. Meyberg: He is asking you whether or not anybody else sold opals while you were there?

A. I don't think that anybody else was selling opals while I was there.

Mr. Samuels: Q. You say you don't think or you don't know?

A. I don't know whether anyone else was selling them or not, no, sir.

Q. You can't state with positiveness, can you?

A. No, sir.

Q. Do you know who the Australian Commission was composed of which was present at the Panama-Pacific International Exposition?

A. No, I do not.

Q. Could you mention any one of that Commission?

A. No, sir.

Q. Not one?

A. No, sir.

Q. Now, do I understand from you that all of the material which was shipped from Australia was located by you in your space at the Australian Pavilion?

Mr. Meyberg: May I have that question read?

(Pending question read.)

Mr. Meyberg: Do you understand that question, Mr. Heiser?

A. No, I do not.

Mr. Meyberg: Read it again, Mr. Reporter.

Mr. Samuels: If it is not clear I will seek to clarify it.

(Pending question re-read.)

Mr. Samuels: I will clarify that. I think it is somewhat involved.

Q. Did you keep in your space in the Australian Pavilion, the various shipments of material which were consigned to you immediately before and possibly one or two days after the opening of the Exposition?

A. I couldn't recollect for sure, sir.

Q. Don't you know whether you kept or stored any portion of that material elsewhere during the years 1914 and 1915, or 1915?

A. No, I can't recollect now, sir.

Q. Then it is possible that you had some three tons of material on display or within the area of your space in the Australian Pavilion during the time that you were there?

A. I had it in San Francisco, but I don't know where it all was, sir; I couldn't tell you.

Q. I am asking you at the present time with respect to the Australian Pavilion.

A. That I couldn't say for sure where it was stored.

Q. Was any of your material insured in transit or after arrival in San Francisco?

A. Which material do you mean, sir?

Q. The material which came immediately prior to the opening of the Exposition, and possibly some of it directly following the opening of the Exposition.

A. That I am not sure of, sir.

Q. Did the Queensland Government insure it?

A. That I am not sure of.

Q. You don't know whether you did, or not?

A. I couldn't recollect now.

Q. You could not recollect it?

A. No.

Q. Was it insured by you while it was on display in your space at the Pavilion or stored elsewhere?

A. I haven't any recollection, sir, on that.

Q. Who paid, if you know, the freight for these various shipments of the material we were just referring to?

A. What freight do you mean—from Australia across?

Q. That is the freight I refer to.

A. That was done by the Queensland Government.

Q. That was done by the Queensland Government?

A. I think so, yes. Pardon me. Or by some agency. I didn't pay for it. It was shipped over.

Q. You did not pay for it?

A. No. So I don't really know who paid for it.

Q. Did you have any agreement in writing with the Queensland Government with respect to this material?

A. I have forgotten now.

Q. You have forgotten?

A. Yes, sir.

Q. Was there any agreement between any official of the Government or the Government that it would pay the freight?

A. Well, I can't recollect now, sir.

Q. You can't recollect that?

A. No, sir.

Q. Where was this material located or stored in Australia at the time immediately prior to shipment?

A. Oh, I couldn't start to remember the names of the different places, sir.

Q. Do you mean that the material was shipped from various locations by the Government—various locations, of course, in Australia?

A. I couldn't give you the exact places of shipment.

Mr. Samuels: I didn't ask you that. I ask that the last answer be stricken as non-responsive, and the question read again to the witness.

(Pending question read.)

A. I couldn't recollect, sir.

Q. You can't recollect that?

A. No.

* * * * * *

Q. Your exhibit was in the Australian Building where Percy Marks had his exhibit?

A. Mr. Marks had several exhibits.

Q. Did he have an exhibit in the building where you were?

A. He had one in the Australian Building, and he had two other exhibits in this city I understand.

Q. I am talking within the Exposition. You do not mean to tell me, do you, Mr. Heiser, that Percy Marks had an exhibit of opals, rare black and light harlequin, cut and rough, precious and semi-precious gems, gold, at any building in the Exposition other than the Australian Building?

A. I think he had, sir.

Q. You say you think. Do you know?

A. I think he had one in the Metallurgy Building besides the Australian Building.

Q. Don't you know that this is headed "Mines and Metallurgy", and that these are gems in the building referred to?

A. The gems I don't think came under that department, sir; they came under a different department, sir, in the Australian Building.

Q. How about Frasers, Ltd.?

A. Frasers, Ltd.?

Q. Yes.

A. There was no Frasers, Ltd. over here. They just sent a few stones over. That would come under the Metallurgy.

Mr. Samuels: I didn't ask you that.

Q. Was that in the same building where you had your exhibit?

A. I am not sure, as I said before.

Q. You are not sure?

A. No.

Q. Do you know of any exhibit of gems of the character which we have been discussing, and which you handled—Australian gems—in any building outside of the Australian Pavilion?

A. Yes, sir

Q. Where?

A. I don't know exactly which building it was. Mr. Phillip Cline and Mr. Shore, from New York, had Australian gems also; two different exhibitors.

Q. Were those gems brought from the United States?

A. No, I think they were brought from Australia.

Q. I mean were the individuals residents of the United States, or were they residents of Australia—the exhibitors?

A. That I don't know.

Q. Don't you know that the Australian Pavilion was limited to Australian residents?

A. You didn't ask me that. You said in any other building.

Q. I am talking about Australian operators.

A. Pardon me. You asked me—

. . . . . .

Mr. Samuels: Q. Do you know of any Australian person, firm or partnership owning gems which originated in Australia at the time of their shipment for the Exposition—

A. There was a man who came—

Mr. Samuels: Pardon me. I haven't finished my question.

A. Excuse me.

Q. (Continuing:) —who displayed either personally or by the name of the person, firm or corporation his product, or their product, in any other Australian pavilion?

A. Yes.

Q. Who?

A. Cline and Shore.

Q. Was Cline a resident of Australia, or did his products come from New York?

A. There was another man. I beg your pardon. Brady.

Q. Brady?

A. Brady was his name, yes.

Q. He lived in Australia?

A. Yes.

Q. And conducted business there?

A. Yes, sir; he was born and raised there. Oh, no; he may not have been born there.

Q. He had no branch in the United States?

A. No, sir.

Q. He had a display of what at the Exposition?

A. He displayed opals and sapphires—Australian gems.

Q. Opals and sapphires—Australian gems?

A. Yes, sir.

Q. And displayed them where?

A. He displayed them with Mr. Shore, and displayed them with a Mr. Cline.

Q. Displayed them where—in what building?

A. I couldn't say which building it was; I can't recollect, sir.

* * * * *

(Trereupon an adjournment was taken until 2:00 o'clock P. M., Tuesday, August 26th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Tuesday, August 26th, 1941, 2:30 P. M.

* * * * *

Mr. Samuels: Q. You referred to the fact that you received in the various shipments these several tons. Can you state with more accuracy the amount other than by stating simply "several tons"?

A. Oh, I should think it was around—no, I couldn't say the exact amount, but I should say—

Q. I do not mean specifically.

A. I should say considerably over four tons.

Q. Considerably over four tons?

A. Yes.

Q. I understand you were cutting and polishing some of the rough material, is that correct?

A. Yes, sir.

Q. And was anybody else cutting and polishing?

A. Yes, there were three and four men cutting and polishing up there with me.

Q. Now, when you discontinued the occupation of this space in the Pavilion, and necessarily the exhibit, did you have any material left?

A. Oh, yes, a terrible lot—the greatest bulk of it.

Q. What did you do with it?

A. Oh, I moved some of it to different banks and different vaults here, sir, and different places.

Q. What banks, and what vaults, and what places?

* * * * *

A. Some of it was at the Wells Fargo Bank, and some we shipped; some I had in my home, I think, where I was staying; the cheaper material we stored.

Mr. Samuels: Q. At your home?

A. The cheaper material we stored, and the better material we had in the Wells Fargo Bank. Now, I do not know exactly how long a time it was that we had it there.

* * * * *

Mr. Meyberg: Well, were there other places that you had this material besides that? He wants to know all places where you had that material at that time.

A. We had the cheaper material in the warehouse, but I can't recollect now what place it was, and the better stuff was in the Wells Fargo Bank, and I think there was another bank that we put it in; I am not sure whether it was the French Bank—I think we had it in the French Bank; we had some of it in the French Bank for a while.

Mr. Samuels: Q. Who are "we"?

A. Myself.

Mr. Samuels: Is there anything further you want to state on that subject?

A. I can't recollect. There was another place, but I can't recollect where it was, Mr. Samuels, now.

Q. Reverting—and I am sorry I overlooked this in my conversation with Mr. Meyberg, who diverted my attention from something which I wanted to bring to your attention with respect to your representation of the Government: Did you at that time know a gentleman by the name of D. B. Edward, of Australia?

A. Edward?

Q. Yes.

A. The name seems familiar, but I can't recollect it now, sir.

Q. Do you know whether he was here in any capacity representing Australia at the Exposition?

A. That I couldn't recollect, sir.

Q. Did you ever come in contact with him so far as you know?

A. The name is familiar with me, yet I can't recollect it, sir. You know, twenty-five years ago is a long time to recall a gentleman's name.

Q. If you were told that Mr. Edward was the executive secretary of the Australian Pavilion at the Panama-Pacific Exposition, would that refresh your recollection?

A. No, sir.

Q. It would not?

A. Not at this particular time.

Q. Did you know a gentleman by the name of James Campbell?

A. Campbell?

Q. Yes.

A. He was the Commissioner, wasn't he—the Australian Commissioner here? I am not positive; I can't say for sure, no, sir; I can't remember. There was a Mr. Campbell, though, but I think he was the Commissioner over here, wasn't he?

Q. Was he the official representative of the Queensland Government at the Exposition?

A. That I couldn't say, sir. I can't remember back so far, but the name seems familiar. It is like you asked me all those questions as to the exhibitors—

Mr. Samuels: Don't argue with me.

A. I am not arguing with you. I am trying to tell you.

Mr. Samuels: You do not have to argue with me. That is not an explanation. You are simply unable to recall, isn't that right?

A. Yes, sir.

* * * * *

Q. If it were brought to your attention that Mr. Edward, regarding whom I inquired whether you had knowledge of, asserted that you had no official connection with the Government or with any of the Australian states in connection with Australia's representation at the San Francisco Exposition, would that refresh your recollection on the subject?

A. No.

* * * * *

Q. Do you know who the under-secretary of Mines of Queensland is?

A. Not now I couldn't tell you.

Q. Do you know who the Government geologist of the State of New South Wales is?

A. No. Is there only one?

Q. Do you know who the Government geologist of New South Wales is?

A. Is there only one?

Q. So far as I know.

A. There must be fifty Government geologists.

Q. For the different states?

A. No, you are talking of New South Wales, aren't you?

Mr. Samuels: Yes.

A. There must be at least fifty of them, including understudies.

Q. Do you know Mr. Leo Jones?

A. No.

Q. In your exhibit at the Australian Pavilion in the Exposition grounds, did you claim to have any official standing so far as the Government of Australia is concerned?

A. No, sir.

* * * * *

Q. I refer to page 234 of the transcript of the testimony given by you in action No. 7,256-C-Law, pending in the Dis-

trict Court of the United States, for the Southern District of California, Central Division, before Honorable Cosgrave, upon the hearing of revaluation.

* * * * *

Q. At the top of the page, line 1, you were asked this question, or these questions, and you gave these answers— the questions were by Mr. Peterson:

"Q. Did the material described in your complaint leave Australia for the United States from the same port?

"A. That I am not sure, sir.

"Q. Did it arrive here in one shipment?

"A. That I am not sure of, either."

* * * * *

Mr. Samuels: Q. You remember those questions being asked you, and your answering them that way, do you not?

A. Which questions?

Q. The two questions I just read to you, and the two answers I just read to you.

A. Out of this book, sir?

Mr. Samuels: Let me read this question:

"Q. But you had it sent, didn't you?"

That is the material described in your complaint in that action.

"A. Pardon me, if I may, Your Worship, tell you the way it was shipped. The Queensland government had me come to represent them, and that material was all shipped as an exhibit by the government at the Panama Exposition. I think it came over in several different shipments because of the different exhibits."

Do you remember so testifying?

A. That was about two years ago. Yes, I think I testified to that, sir.

Q. Then did you come over from the Queensland Government, or did it have you represent it?

A. I beg your pardon?

Q. Did the Queensland Government have you represent it?

A. No, the Queensland Government shipped my material

free and clear as I told you this morning, and gave me the space and access to the building, and power and light to demonstrate a gem exhibit at the Exposition for which they shipped my material for me.

Q. The material was all shipped as an exhibit for the Government, wasn't it?

A. No, the Government shipped it for me, and I was to exhibit it, and the arrangements were that I was to have free access to it, and to be able to dispose of it, cut it and sell it, and make a general demonstration of it.

Q. Then I understand you were not a representative of the Government, nor was it a Government exhibit?

A. I was an independent exhibitor, but the Government sent it over. I wouldn't take the responsibility unless they shipped my stuff for me.

Q. Now, then, I am referring to a history of M. E. Heiser, "Defendant's Exhibit 1." You were the applicant in the matter of the investigation and examination of International Gems before the Department of Investment, Division of Corporations of the State of California, No. 65,704 L. A., held before Assistant Commissioner Thomas J. Kelley, and I will show you that history. It occupies—it covers, rather, one, two, three pages—is that correct, Mr. Meyberg?

(Document exhibited to Mr. Meyberg.)

Q. (Continuing:) —and I will ask you to examine it, Mr. Heiser, and state whether or not you furnished the information appearing in that exhibit?

(Document thereafter handed to the witness.)

A. Yes. I think Mr. Goldman—

Mr. Meyberg: Have you seen that before? Do you know anything about it?

A. No.

Mr. Meyberg: That is all he is asking you. Now, listen to the question.

Mr. Samuels: Will you read the question to the witness, kindly, Mr. Hart?

(Pending question read.)

Mr. Meyberg: Now, you can answer that question.

A. Yes.

Mr. Samuels: Q. Did you furnish that information?

A. Yes, sir.

Mr. Meyberg: Q. Do you know?

A. I am not positive, but I think I did.

Mr. Samuels: First you said "Yes," and then upon the inquiry of your counsel you say you are not positive, but you think you did. Isn't it a fact that you furnished that information?

A. I think I did.

Mr. Samuels: All right. You think you did. You are not certain.

Q. Can you tell me where Mr. Goldman, your then attorney, would procure that data aside from you?

A. Well, I might have given some of these papers to the Standard Oil, and they might have gotten it through Mr. Klinker, or some one like that.

Mr. Samuels: We ask to strike out the witness' answer that he might have done this, or he might have done that, as speculative and not admissible.

Q. According to your best recollection wasn't this data furnished by you?

A. It could have been.

Q. I will ask you to answer directly, and not what could have been. Isn't it correct according to your best recollection that the data was furnished by you?

A. According to my best recollection I can't recollect a thing about it today.

Q. Do you know when this occurred?

A. The exact time? No, I don't.

Q. Do you know what year it was?

A. No. What year was it?

Q. You don't remember the year?

A. No.

Q. I will tell you the year. The application was filed June

16th, 1937, with the Corporation Commissioner for a permit to issue stock.

A. That was four years ago.

Q. You were present at the various sessions there, were you not?

A. Yes, sir, I was present.

Q. At the sessions before the Corporation Commissioner?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Mr. Meyberg: Now, what do you mean by various sessions?

Mr. Samuels: There were a number of them.

Mr. Meyberg: Was he present at all of them? I wasn't there.

Mr. Samuels: I know you weren't.

Mr. Meyberg: I don't know anything about it.

Mr. Samuels: Q. Have you any recollection of being present at the time when your counsel—which is the fact—offered in evidence this history of M. E. Heiser, so designated?

A. He offered certain papers in evidence, but I don't know what they were; I did not read them before he put them in evidence; I couldn't say for sure.

Mr. Samuels: All right. We do not have to pursue that farther.

Q. Did you give him the date of your birth?

A. I think he got it.

Mr. Samuels: Q. Is the date of your birth appearing in this history correct?

A. The year is. There is no date on there at all?

Q. That is a date.

A. Yes, that is correct.

Q. That is correct?

A. Yes.

Q. Is it correct that you were taken to Australia when five months old, and arrived there at nine months old; edu-

cated in Australia and England; instructed in mining by Professor Robert Taylor?

A. Yes.

Q. All right. Now, then, I call your attention to this statement in this exhibit denominated "History of M. E. Heiser": "In 1913-1914, controlled the Queensland opals and represented the Government of that state at the Panama Pacific International Exposition, San Francisco, California. In 1915, as their gem and gold representative." Is that true or correct?

A. Well, I don't know whether I put that in there, or not, sir.

Q. I didn't ask you that—I didn't ask you whether you put it in there at all. I asked you whether it was true.

A. It is true that I was over here demonstrating Australian gems in the Australian Building.

Mr. Samuels: I will take it piecemeal, then.

Q. Is it true or untrue that you represented the Government of that State, Queensland, at the Panama-Pacific International Exposition, San Francisco, California?

A. Well, I represented the gems from the State of Queensland at the Panama-Pacific International Exposition.

Mr. Samuels: I ask that go out as non-responsive, and I insist upon the witness answering the question. You know the question. Repeat that question to the witness, kindly, Mr. Reporter.

(Pending question read.)

A. Well, I represented them, and I didn't represent them—you can take it either way, sir—because the Government shipped my merchandise over here with the idea of me making the representation. I wouldn't represent them because I would be in bond, and so as to have freedom to sell my merchandise I came as an individual. Now, it is a technical question whether I represented them, or not. Some might say I represented them, and others might say I didn't represent them. That would be a matter of opinion.

Mr. Samuels: I ask that answer be stricken as purely argumentative, and not responsive to the question.

Q. Did you represent the Government of Queensland at the Panama-Pacific International Exposition?

A. As their representative?

Q. As their representative. That is the language. That is all I asked you.

A. As their representative, no, but as a representative of the gems, yes.

* * * * *

Q. Now, returning to the question of storage of the material, which has been identified, upon your discontinuance of your exhibit at the Exposition: You say some of the cheaper material was stored you believe in a warehouse?

A. Yes, I think we stored the industrial stuff and the cheaper stuff in the same warehouse somewhere.

Q. Do you know the name of the warehouse, or where it was located?

A. No, I couldn't say.

Q. When you say "cheaper"—was there a quantity of it stored there?

A. I couldn't tell you right offhand, sir.

Q. You couldn't give me any approximation at all?

A. No.

Q. You couldn't say whether it was a thousand ounces or two tons?

A. No.

* * * * *

Q. Did you state, Mr. Heiser, that some of the cheaper industrial material was stored at your home at that time?

A. I said I wasn't sure where it was stored. It was stored in a warehouse—I am not sure where it was stored.

Q. Where was your home at that time?

A. I couldn't tell you where it was at that particular period.

Q. Did you have a home of your own then?

A. I was living in an apartment.

Q. You were living in an apartment?

A. Yes.

Q. Then you know the name of the apartment, do you not?

A. I couldn't recollect now. I travel around a lot.

Q. You couldn't recollect at all?

A. No, sir. That was twenty-five years ago.

Q. All right.

A. And I have been all over the world since then.

Q. Now, was there any other place where any of the industrial material was stored according to your best recollection at that time?

A. No, I can't recall where it was stored, sir.

Q. Now, was there any of the industrial material stored at any one of the banks in San Francisco, or elsewhere, at that time—I mean stored by you at that time, Mr. Heiser?

A. I don't think so. We wouldn't have stored industrial material in a bank.

Q. You would not?

A. No.

Q. So your best judgment is that none was stored there, is that correct?

A. That is right, sir.

Q. Now, what type of material did you store in the vault of any bank—at that time. Of course, I am speaking of you particularly.

A. Rough sapphires, zircons, and stones of more valuable nature.

Q. Do you know the quantity that you had to store at that time?

A. No, I couldn't say offhand.

Q. You couldn't approximate the quantity at all?

A. Not offhand I couldn't say, no, sir.

Q. But you do definitely recollect that you stored some of the more valuable material—. I suppose it is commercial material, is that right?

A. Gem material.

Q. Gem material we will refer to it as. You stored it in the Wells Fargo Bank?

A. Yes, I had some in the Wells Fargo Bank.

Mr. Meyberg: What was that answer?

A. Yes, I had some in the Wells Fargo Bank.

Mr. Samuels: Q. Was it in a safety deposit box?

A. No, it was in a big—in a large box—in several large trunks—specially made trunks—wooden boxes like.

Q. Wooden boxes?

A. Yes.

Q. The gem material?

A. Yes.

Q. In the Wells Fargo Bank, is that correct?

A. Yes, sir.

Q. And now you are positive on that subject?

A. It was twenty-five years ago. As near as I can be positive, yes, sir.

Q. Did you place a valuation upon it?

A. No, they were all sealed contents under bond. That is the way we used to sign for them in the bank, if I remember correctly. We used to sign a receipt for sealed box, contents unknown.

Q. Did you insure it at that time?

A. I am not sure.

Q. Do you know the rental you paid for that storage?

A. I don't think so. No, I haven't the slightest idea.

Q. You couldn't say whether it was one dollar a month, or twenty dollars a month?

A. No, sir. I talked it over with a gentleman. I think it was Mr. Lippman. He is now dead.

Q. Mr. Lippman is not dead.

A. I forget the name of the gentleman. I had a letter to the old gentleman. I was a stranger here, and he made me kind of a special rate on this room. It was a room as you went into the vault behind the main, big door; it was in a large room.

Q. How many boxes would you say you had stored there according to the best of your recollection?

A. I couldn't say for sure, really.

Q. More than one?

A. Oh, yes.

Q. More than five?

A. Oh, I think I had that many, because I had opals and sapphires. At least I had one, and then I had another—I would consider I had more than three stored there. Oh, I couldn't tell you exactly. It was twenty-five years ago. It is impossible for me to remember so well.

Mr. Samuels: Off the record, please.

(Off the record.)

Q. Will you state to the best of your recollection the size of these several boxes which were stored by you in the open vault space of the Wells Fargo Bank?

A. Well, I would say one of the boxes was about like that table there, and about that deep. (Witness indicating.)

Q. By "like that table," what dimension do you mean?

A. Like across there. (Indicating.) Not quite as large as across there. From where that bowl is to across here. (Witness indicating.)

Mr. Meyberg: About two and a half feet long and a foot and a half high.

Mr. Samuels: Q. You mean two and a half feet from here to here? (Indicating.)

A. Yes.

Mr. Samuels: Let us take a ruler and get it.

Mr. Meyberg: Q. Do you remember the size of the box?

A. No, I am only giving it to you approximately. It was as I say twenty-five years ago.

Mr. Samuels: We do not expect it in inches from you.

A. I will say two foot three inches by eighteen inches.

Q. The eighteen inches were the depth, is that right?

A. Yes. And then the other one was the trunk.

Q. The other one was a trunk?

A. A trunk.

Q. What kind of a trunk?

A. Possibly three foot six or three foot nine by about twenty inches by about twenty-four inches. I remember this because I still have got that trunk, and that is why I remember that particularly.

Q. And was there another box or another trunk?

A. There was a small tin trunk.

Q. A small tin trunk?

A. You know, galvanized iron trunk.

Q. What size would you say that was?

A. Oh, I would say about two foot nine by eighteen inches by about nine inches.

Q. And filled with these uncut stones, as you referred to them?

A. I generally carried opals in that.

Q. Opals in all three?

A. No, opals, sapphires and jades I had in that.

Mr. Meyberg: Q. You mean in the tin box?

A. In the tin box, yes.

Mr. Samuels: Q. Did you have at that time, or immediately following it, or preceding it, any safety deposit box in that bank?

A. Not to my recollection, sir.

Q. Did you ever have one there?

A. That I don't know, sir. I couldn't recollect.

Q. You don't know that? You don't recall that?

A. No, sir.

Q. Were these boxes and trunks—or, rather, one box and two trunks so far that you have referred to—was there anything else besides the box and the two trunks stored there at that time?

A. I am not sure, sir. There might have been, sir.

Q. Were they deposited in your name?

A. I think they would have been, but I couldn't say for sure.

Q. Do you know whether anybody else at that time had access to them?

A. I had a man helping me.

Q. No. I mean access for the purpose of removing them.

A. He used to go there and come for me and do business for me—a fellow named Goldworth. I got him through the British Consulate.

Mr. Samuels: Never mind that.

A. It comes back to me, now. He had access to go there. He used to take the stuff in for me.

Q. Are those all of the places you recall storing your material which we have discussed, in the City and County of San Francisco?

A. There were two other places I had stuff stored at that time, but I can't place where it was, Mr. Samuels; there were

two other places, but I can't recollect where they were. It may come back to me later on today, but I can't recollect it now.

Q. You have none of the receipts you received—

A. No, sir.

Q. (Continuing:) —from the bank or any other place of storage?

A. No. I tried to get some of them.

Q. Were these other places banks, or were they private houses?

A. No, they were warehouses.

Q. They were warehouses?

A. Not warehouses. I think they were banks. You know the bank vaultage where they charge you so much a month to put a trunk in, but I couldn't say where they were now.

Q. How long did the material which was stored in the Wells Fargo vault remain there, do you know?

A. No, I couldn't tell you the exact time, sir. I am not certain of that.

Q. Approximately?

A. No, I couldn't tell you the exact time.

Q. Did you withdraw it at any time?

A. Yes, I used to take stuff out and put it back; I was continuously moving around with material.

Q. These boxes, then, weren't bound, were they? I mean the one box wasn't nailed down, but it was inaccessible, is that right?

A. There was a padlock on it.

Q. The box had a padlock to it?

A. Yes, any of those things have locks on them, naturally.

Q. Did the material or any substantial portion of it remain there until 1928?

A. That I am not sure of. I had a hazy recollection that it was, and then again I tried to think about it after I was cross-examined in Los Angeles, and I am not sure what part of the time it was there, sir; I am not positive of it, because after all, you know, trying to think back such a long time a man can make a mistake so easily on that, but it was there for a long time, but the exact number of years I couldn't say. I believe we moved it from one branch of the Wells Fargo Bank to another branch.

Q. When you say you moved it to another branch of the Wells Fargo Bank, do you refer to the Union Trust Company?

A. Yes, I think I had one of the trunks stored there for a while, but it is awfully hazy to me.

Q. They were either in the Wells Fargo Bank or the Union Trust Company, which merged with the Wells Fargo Bank, is that right?

A. Yes; and then there were other bank vaults I had stuff in, but I can't place where they were, sir. I have been trying to think it out.

Q. Were you occupied in any manner after you discontinued your exhibit at the Panama-Pacific Exposition?

A. How do you mean, occupied, sir?

Q. Did you follow any trade or active livelihood?

A. Oh, I opened a gem cutting place at 208 Stockton Street, and I had one in the Lick Building for quite a while. I had the one on Stockton Street I think for about eighteen months after that; and I had one at 711 South Broadway, Los Angeles—I don't know the exact time, whether it was six months or nine months, sir; I can't remember the exact time.

Mr. Samuels: What places were those that he mentioned?

(Record read.)

A. That is right.

Q. And what were you doing cutting and polishing gems there?

A. Yes, sapphires and opals.

Q. And seeking to dispose of them, is that right?

A. Yes, sir.

Q. Retail?

A. Chiefly wholesale. I did very little retail business.

Q. You did very little retail business?

A. Yes. At the store on Stockton Street I did a little retail business, but the majority of the business was a wholesale business.

Q. Reverting one moment to the space you had in the Australian Pavilion while you were there at the Exposition, I am going to ask you this question: Is it not a fact, Mr. Heiser, that you were simply allowed to occupy a small space

in that pavilion in which was a bench at which you cut and polished certain gems?

A. No, it is not a fact.

Q. Did you have a safe deposit box in which any of your material, precious or otherwise, was stored following your termination of your exhibit at the Exposition—

A. How do you mean?

Q. (Continuing:) —in any bank other than the Wells-Fargo Bank in this city?

Mr. Meyberg: What is the question?

(Pending question read.)

Mr. Meyberg: You mean immediately following it, or from that time up to the present time?

Mr. Samuels: No. I will say during the period of two years subsequent to 1915.

A. Yes, I think I did, but I can't recall which one it was.

Mr. Meyberg: He hasn't asked you yet which one it was. Just listen to the questions.

Mr. Samuels: The answer was "Yes," is that correct?

A. Yes, sir.

Q. What bank was it?

A. I can't recall, sir.

Q. You can't recall?

A. No, sir.

Q. Did you store any of this material in any place during the period from 1915 until 1917 inclusive, outside of the City and County of San Francisco?

A. Did I store any stuff between 1916 and 1917?

Q. Between 1915, 1916 and 1917, outside of the City and County of San Francisco.

A. I had stuff in the East.

Q. I am talking about this material that came here.

A. Yes, I shipped stuff East; I shipped it all over the place.

Q. When did you ship it East?

A. I couldn't tell you the exact date. It was during the period of doing business, sir.

Q. During what period of doing business?
A. I couldn't tell you. That was twenty-five years ago.

Mr. Meyberg: Just a minute. Let him ask the questions, and you answer them.

Mr. Samuels: Q. Did you do that prior to 1917—ship any to New York?

A. Yes.
Q. You did?
A. Sure, I did, yes.
Q. Prior to 1917?
A. Yes.
Q. What did you ship, and where did you ship it?
A. I couldn't recollect now, sir.
Q. Do you know to what place you shipped it?
A. I have a recollection of shipping some to Buffalo, New York.
Q. What did you ship to Buffalo, New York?
A. Opals chiefly.
Q. What?
A. Opals.
Q. Rough material?
A. I couldn't tell you for sure what it was.
Q. If it was cut material would you ship it to New York?
A. Oh, yes.
Q. What was the reason for shipping cut opals to New York?
A. To sell it. People buy it there as well as out here.
Q. Did you have a representative there?
A. No. A man came here during the Fair. I think he came here with the Shriners' Convention, if I remember correctly.

Mr. Meyberg: Let us see what that question was. Let us have the question read.

(Pending question read.)

Mr. Meyberg: Now, would you answer that question?

A. There was a buyer.

Mr. Samuels: Q. Were you able to display them to the buyer?

A. No.

Q. Did anybody represent you there to display them to the buyer?

A. No.

Q. How did you display them to the buyer, then?

A. We just shipped them on a memorandum.

Q. You shipped some to a buyer?

A. Yes, sir.

Q. That wasn't for storage?

A. No.

Q. Did you make any other shipments during the time in question to the East? You said New York. We will say to New York State.

Mr. Meyberg: That is from 1915 to 1917?

Mr. Samuels: That is correct.

Mr. Meyberg: Do you understand that?

A. Yes.

Mr. Meyberg: He is asking you—

Mr. Samuels: He answered the question.

Mr. Meyberg: I think you asked if he remembered shipping any, and if so, to whom.

Mr. Samuels: For the purpose of storage.

A. I think I shipped a lot to Buffalo, New York.

Q. During what year of those three years—1915, 1916 or 1917?

A. I couldn't tell you exactly, but there was a Fair at Buffalo—there was an exhibition at Buffalo, New York, and they asked me to send an exhibit there.

Q. And did you attend the Fair?

A. I went there.

Q. What time did you go there?

A. Oh, I couldn't tell you the exact time now, sir. It just came back to me about the Fair.

(Recess.)

Q. You remained in this city, did you not, until your marriage, Mr. Heiser?

A. I am not sure. I think I went away several times.

Q. Do you mean on trips?

A. On business trips.

Q. I mean to the East, or any distance, or did you remain in the immediate vicinity of San Francisco?

A. I was out of the State. I went to Oregon.

Q. I mean an extended trip to the East.

A. Yes.

Q. You didn't make a trip to the East before your marriage, did you?

A. Yes, I think I did, sir. I am not sure, but I think I did. I am not positive about that.

* * * * *

Q. Now, calling your attention to page 239 of the testimony given by you in the action No. 7,256-C-Law, upon the revaluation—the hearing of the application for revaluation of the material which was the subject of the judgment procured by you in the District Court of the United States for the Southern District of California, Central Division—. I think that identifies that for your purpose, does it not, Mr. Meyberg?

Mr. Meyberg: What page?

Mr. Samuels: Page 239.

Q. This was a question by Mr. Peterson:

"Q. So, to pursue my inquiry, from the time that the stones arrived here in 1914, was it, or 1915?

"The Court: I think 1914.

"A. In the early part of 1914.

"Q. By Mr. Peterson: They have been here, so far as you know, ever since?

"The Court: What?

"Mr. Peterson: They have been here in America, so far as he knows, ever since?

"A. Yes."

Do you recall those questions being asked you, and your giving those answers?

Mr. Meyberg: Read that las. answer? They have been what?

Mr. Samuels: "They have been here in America, so far as he knows, ever since?"

And the witness answered, "Yes." That is America.

Mr. Meyberg: Well—

A. That didn't mean all of them. That is only talking about one specific lot of stones.

* * * * *

Mr. Samuels: Q. Do you recall that question being asked you, and do you recall giving that answer, Mr. Heiser?

A. I do not recall that answer, because there were so many questions and answers there, Mr. Samuels, as you must be aware of.

Mr. Samuels: We ask that the witness' statement or response outside of the portion, "I do not recall that answer" be stricken as non-responsive and argumentative.

Q. "Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the Exposition in 1915 down to 1928?"

Do you recall that question?

A. Yes, I recall that question.

Q. You recall that question?

Mr. Meyberg: Do you recall that question and answer?

A. I slightly recall it.

* * * * *

Q. Now, then, there was an objection to that as immaterial by Mr. Weyberg, who was then representing you; the objection was overruled, and this question was asked you by Mr. Peterson:

"Q. Where were they?"

And the record shows your answer:

"A. I think in the Wells Fargo Nevada Safe Deposit Company."

Do you remember that question, and do you remember your giving that answer?

A. I can't remember the exact question, Mr. Samuels. As I said before, there were so many questions that I could not remember them.

Q. Do you remember that answer?

A. No, I couldn't remember it exactly, sir.

Q. Does that refresh your recollection as to the retention of any portion of this material which you assert you stored with the Wells Fargo Bank?

A. No. I have a recollection that it was in the Wells Fargo Bank, but I couldn't tell you the exact time, it was so many years ago; and I don't think that all of that material was in the Wells Fargo Bank. I think the gem material was in the Wells Fargo Bank—I don't know whether it was a year or two years or three years; I couldn't say for sure. And then the other material was in one of the other vaults in storage, but I couldn't say exactly where.

Q. Pursuing the question:

"Q. In San Francisco?

"A. Yes, sir."

Do you remember that question, and do you remember that answer?

A. No, that exact question I couldn't remember. I was two days being examined.

Q. Was the answer, "I think in the Wells Fargo Nevada Safe Deposit Company" your best recollection at that time?

A. Well, it came to me that I had some of the material there, but I couldn't remember exactly how long.

Mr. Samuels: I asked you a direct question, and I ask the answer be striken as non-responsive and argumentative.

A. I said I thought it was there.

Mr. Samuels: One moment, if you will, kindly, and I will reform the question.

Mr. Meyberg: Just one moment.

Mr. Samuels: Q. Was that answer which I have read to you in response to Mr. Peterson's question your best recol-

lection of the location of the gems with respect to which he was inquiring?

Mr. Meyberg: At the time the answer was given, you mean?

Mr. Samuels: Yes, at the time the answer was given.

A. Yes, at the time it was my best recollection.

Q. Is it your best recollection now? Or rather, is it your recollection?

Strike out the word "now," Mr. Reporter.

A. My recollection now is that I had the stuff in the Wells Fargo Bank. I don't know whether it is the Wells Fargo Bank or Union Trust Company, but they are both the same. I had the stuff there over a period of years, and then I had some merchandise in one of the warehouses here, but I can't say exactly where it was. The industrial stuff I am speaking of.

Q. We are talking now of the material which was the subject matter of this action.

A. That is right.

Q. Which was brought by you in the United States District Court for the Southern District of California, Central Division, and for which you procured a judgment.

A. Yes.

Q. And the value of which was being reconsidered by the Court upon this hearing.

A. Yes.

Q. Now, with respect to that materia—. You know what material I am referring to, do you not?

A. Yes, sir.

Q. Is it your present recollection that it was stored in the Wells Fargo Nevada Safe Deposit Company, or was it the Union Trust Company vault?

A. Not all of it all of the time.

Q. Not all of it all of the time?

A. No. The gem material was for some part of the time, but the industrial material I do not think was ever in the Wells Fargo Bank to my recollection since then. That is the best of my recollection, sir.

Q. But some of the material that was in the box—

A. The gem material.

Q. The gem material which was in the box and the two trunks, is that correct?

Mr. Meyberg: What was the question?

Mr. Samuels: This is the material or a portion of the material which Mr. Heiser testified he stored in the Wells Fargo vault in a box, one large trunk and one small trunk. Is that correct?

Mr. Meyberg: What is the question?

Mr. Samuels: That is the question.

Mr. Meyberg: Is there a question there, Mr. Reporter? It sounds to me like a statement.

Mr. Samuels: The question is this: Is this a portion of that material? That is what he was asked.

(Record read.)

Mr. Meyberg: Do you understand that question, Mr. Heiser?

A. Yes, sir.

Mr. Meyberg: If you do understand it, you can answer it.

A. Yes, sir.

Mr. Samuels: Q. This was some of the material?

A. This was some of the material, yes, sir.

Q. Now, during the period that this gem material was stored in the Wells Fargo Bank by you did you return it to the Tax Collector of the City and County of San Francisco for assessment?

* * * * *

(Pending question read as follows:

"Q. Now, during the period that this gem material was stored in the Wells Fargo Bank by you did you return it to the Tax Collector of the City and County of San Francisco for assessment?")

A. I think on the advice of counsel I will refuse to answer that question.

Mr. Samuels: Your counsel hasn't so advised you.

Mr. Moyberg: Well, Mr. Heiser, you can state what the facts are, if you wish to, and we will save a little time here.

A. I don't have any recollection whether I did, or not, Mr. Samuels, to tell you the truth. You are asking me to go back twenty-five years on different matters that are very, very difficult to remember. Your associate just now couldn't recollect something you asked him to find in a book that he has been reading and that he has been pondering over for the last few days.

Mr. Samuels: I will ask that all of the witness' answer, outside of the fact that he doesn't recollect, be stricken on the ground it is argumentative and non-responsive—particularly that portion referring to my associate.

Will you read the last answer to me?

(Record read as follows:)

"A. I don't have any recollection whether I did, or not, Mr. Samuels, to tell you the truth. You are asking me to go back twenty-five years on different matters that are very, very difficult to remember.")

Mr. Samuels: The balance of the answer I ask be stricken on the ground assigned.

Q. Did you at any time between 1917 and 1928 return to the Tax Collector of the City and County of San Francisco for assessment any material, either mechanical or commercial, belonging to you and comprehending gems of the character which you have described?

A. I don't recollect, sir.

Q. You don't recollect that?

A. No, sir.

Q. Is it not a fact, Mr. Heiser, that at no time did you return any part of that material for assessment?

A. That I am not sure of, sir.

Q. Have you any recollection on the subject at all?

A. No, sir.

Q. Would it refresh your recollection if I told you that the records of the Tax-Collector of the City and County of San Francisco showed that during the time I have mentioned

from 1915 to 1928 there was no return of any material of personal property by you for assessment?

Mr. Meyberg: Just a minute. That is objected to as being purely argumentative—

* * * * *

Mr. Samuels: Q. To what extent, if you can recall, Mr. Heiser, did you withdraw whether for the purpose of sale or otherwise any of the material which you had stored in the Wells Fargo Bank, or in any other bank in the City and County of San Francisco, or in the warehouses you have referred to, or in any other place of storage in the City and County of San Francisco, between the time of creation of the storage and the year 1928?

A. I couldn't recall right offhand, sir.

Q. Did you withdraw any or all of the Wells Fargo Bank material?

A. Oh, yes, I moved a lot of stones out of there.

Q. What?

A. I moved a lot of stones out of there.

Q. Did you replace any of them during that period of time?

A. You see, I had such a lot of stones in the vault when I first opened the deposit there. In the first place, I moved some to New York as I said and to Chicago. I couldn't say exactly how much was moved, sir.

Q. Did you move any of the three containers or receptacles you have referred to—that is, either one or the other of the satchels or trunks—

A. I believe—

Mr. Samuels: Pardon me. I have not finished the question.

Mr. Meyberg: Let him finish the question.

Mr. Samuels: Q. (Continuing:) —or the box? The question is finished now.

Mr. Meyberg: When? Have you got a date there, Mr. Samuels?

Mr. Samuels: Yes. I gave that to him. I said during that period of time.

A. Yes, I think two of the boxes were moved.

Q. Two of the boxes were moved?

A. Yes.

Q. Then you had more than one box?

A. I said I had three boxes—a box and a trunk and a tin box.

Q. I asked you about the box or either of the trunks. Do you understand? We have been differentiating by the terms "box" and "trunks."

A. I think the box and one of the trunks were moved.

Q. You moved entirely then one of the boxes and one of the trunks?

A. Yes.

Q. Was it the smaller or larger trunk?

A. I couldn't say for sure.

Q. When were those two containers removed?

A. I couldn't tell you for sure; I couldn't tell you the exact time of removal.

Q. Was it prior to 1928—the removal?

A. Oh, yes, we moved them prior to that.

Q. Then in the year 1928 the only receptacle left in storage in the Wells Fargo Bank was one or the other of the two trunks, is that correct?

A. I do not know whether they were there right up to 1928, sir. I am not positive about that, sir, as I said previously in my testimony when Mr. Peterson was cross-examining me.

Mr. Samuels: Don't refer to that, please.

A. I said I wasn't sure.

• • • • •

Q. You say you are not sure, is that correct?

A. I am not sure.

Q. You are not sure?

A. That is correct.

Q. With respect to the industrial material, did you move any of that from its place of storage between the years 1914 and 1928? Now, when I say "place of storage" I refer to the City and County of San Francisco.

A. Oh, yes.

Q. Will you tell me the times of removal, the quantities and place?

A. I couldn't tell you the exact time.

Q. You can't give me the time at all?

A. No. It was shipped to New York.

Q. What did you move to New York?

A. I can't tell you the exact weight. It was quite a large quantity.

Q. Do you know where that was stored?

A. No. The vault was pulled down. I couldn't tell you the name of it now.

Q. The vault was pulled down?

A. They pulled them down, and the stuff was moved. We sold quite a lot of that stuff in different places in the East.

Q. One moment. You said the vaults were pulled down. What vaults do you refer to that were pulled down?

A. They were vaults on 42nd Street, I think it was, New York City.

Q. I am talking about San Francisco. I am not talking about New York City, if you don't mind.

A. I beg your pardon. I thought you asked me if I shipped any stuff out, and where I shipped it. I thought that was your question.

* * * * * *

Mr. Samuels: Q. I am referring, Mr. Heiser, to the industrial material which you had stored in the City and County of San Francisco, and nowhere else, and I am asking you whether between the years 1915, when you stored it in San Francisco, and 1928, if you withdrew from storage and moved any portion of that industrial material?

Mr. Meyberg: Go ahead and answer the question.

A. Yes.

Mr. Samuels: All right.

Q. Now, when and from where?

A. I don't know exactly what time, and I can't tell you exactly what place, sir, in San Francisco, that I shipped it.

Q. You can't give me any year at all between the years 1914 and 1928—

A. No, sir.

Q. (Continuing:) —of the time of removal?

A. No. I was in Australia for about three years during that period, and I can't tell you sir; it is impossible.

Q. And you can't tell me the extent of the material which you moved during that period of time?

A. No, not now, sir.

Q. Do you know how much of the material—. I am referring to industrial sapphires, or other industrial gems of the type you referred to. Do you know whether any industrial sapphires were left in storage in the year 1928— in storage in the City and County of San Francisco?

A. In 1928, I don't think there was.

Q. You don't think there were any here at that time at all?

A. I think we shipped it in 1928.

Q. What?

A. I think we shipped it in 1928.

Q. Shipped it where?

A. Shipped it to Los Angeles.

Q. Then do I understand from you that the industrial material which was shipped to Los Angeles in 1928 was shipped from storage in San Francisco?

A. Some of it was. I am not positive, sir—I am not positive whether it was shipped from a warehouse here, or where it was shipped from. It was shipped from San Francisco, but I am not sure of the exact movement of that parcel of industrial stuff you are speaking about.

Q. Were you in San Francisco at the time of any shipment to Los Angeles in the year 1928—

A. No, I was not.

Mr. Samuels: Just a moment.

Mr. Meyberg: Let him finish the question.

Mr. Samuels: Q. (Continuing:) —of material from San Francisco?

A. No.

Q. You were not?

A. No.

Q. Is it not a fact you had industrial sapphires stored in the residence in the City and County of San Francisco

occupied by one E. A. Lobree in any of the following years, 1921, 1922, and 1923?

A. It is just possible I had, sir.

Q. Have you any recollection at all on the subject?

A. No.

Q. You have no recollection at all on the subject?

A. Not at the present time. During that period I think I was out of the country, sir.

Q. Yes.

A. 1921, 1922 and 1923, I think I was in Australia then.

Q. When did you return to the United States after that?

A. I came back to America for a few months, and then I went right back to Australia.

Q. I did not ask you that. When did you return to the United States—what year?

A. I can't tell you what year it was, sir.

Q. Suppose I read to you from your history, and that may refresh your recollection. This has been identified—

Mr. Meyberg: What has it been identified as?

Mr. Samuels: Page 3, and being a portion of a hearing before Assistant Commissioner Thomas J. Kelley.

Mr. Meyberg: Identified by whom, Mr. Samuels—identified by you or by Mr. Heiser?

Mr. Samuels: By Mr. Heiser, and it so appears in the record.

Mr. Meyberg: Mr. Heiser stated he didn't know anything about that statement.

Mr. Samuels: That was not his statement at all.

Mr. Meyberg: That is my idea of his statement.

Mr. Samuels: That was not his statement at all, Mr. Meyberg. I am going to read from this history, and if I haven't laid the proper foundation, then, the fault is mine, and the responsibility is mine.

Mr. Meyberg: All right. Put your question to the witness.

Mr. Samuels: Q. "I returned to America to supply the

demands in 1921." Do you remember making that statement? Is that statement correct?

• • • • •

Q. Did Mr. Goldman represent you in the presentation of that application to the Commissioner of Corporations?

A. Yes, sir.

Mr. Meyberg: Did he represent you personally?

A. No, not me personally. Four or five other chaps.

Mr. Samuels: Q. Did he also represent you upon the hearing on the application?

A. Yes, sir.

Q. And in that letter appears the following:

"Mr. Heiser has handed me a resume of his lifetime operations, and also the background of Ted Zimmer, which I am enclosing herewith as Exhibit 'A' hereof.

"May this letter and the exhibit be considered as an Amendment to the Application heretofore filed in this matter."

Do you remember handing to Mr. Goldman the history which I brought to your attention just now?

A. No, I couldn't quite recollect that, sir.

Q. You can't quite recollect it?

A. No.

Q. Have you any recollection at all on the subject?

A. Not on that particular subject, no.

Q. You have no particular recollection on that subject?

A. No.

Q. You have no recollection of having seen this history of your life before?

A. I don't remember. Not in the way it is there. I don't quite remember it: You see—

Q. You don't quite remember it?

Mr. Meyberg: Just a moment. Let him finish his answer. Give him an oportunity to finish his answer.

Mr. Samuels: Q. Have you any remembrance of it? You said you didn't quite remember it.

A. I was out of Los Angeles while a lot of this was

going on—a lot of this was going on while I wasn't in the city; a lot of it was taking place when I wasn't there, and they used to wire me, and I would come in when I was requested to do so.

Mr. Samuels: I will ask you this question—and I will reserve the right to also later supplement it if necessary—to supplement the foundation laid for the introduction of the history of Mr. Heiser appearing in the record before the Commissioner of Corporations, although I will say at this time there can be no doubt that it is properly admissible, and that the foundation has been amply established.

Q. Did you return to America in the year 1921?

A. It is just possible, sir.

Q. Have you any recollection of doing so?

A. Not the exact date.

Q. I didn't ask you for the exact date. I said in the year 1921.

A. I am not positive that I came back at that time. I crossed from Australia on several occasions during the period you asked me, so I wouldn't tell you whether it was that year or the next year, but I was backwards and forwards there very regularly, sir.

Q. Did you return to America in the year 1922?

A. That I am not sure about.

Q. Did you return to America in the year 1923?

A. I am not positive on that, but I could get my passport book and refresh my memory, and tell you when it was. If you want that, I think I can do that.

Q. Have you a book showing an account of sales made by you of your gems?

A. No, not here.

Q. You have a record?

A. Not here.

Q. Have you one in the City of Los Angeles?

A. No, I haven't.

Q. Where is your record?

A. My records that I had are in London.

Q. You have no local record at all?

A. No.

Q. So that you wouldn't be in a position to testify to—

A. Not the exact dates or times.

* * * * *

(Record read as follows:

"Q. So that you wouldn't be in a position to testify to—")

Q. (Continuing:) —specific sales, quantity or prices, and the approximate time they were made by you in the City and County of San Francisco or elsewhere in the United States?

A. No, sir.

Q. Now, then, did you contract with the Big Four in New York City to supply them with all the gems you could mine or produce for five years?

A. Yes, I had a contract.

Q. Who were the Big Four?

A. Well, I have forgotten their names now.

Q. You have forgotten their names?

A. One of the men was a Mr. Hopkins.

Q. And you have forgotten the other three names?

A. Yes. You are talking about quite a few years ago.

Q. You controlled a quarter interest of the voting stock of the Sapphire Mining & Cutting Corporation, 665, 5th Avenue, New York—do you remember that?

A. Yes, I had quite a large amount of stock, but I couldn't say offhand whether it was a quarter, or whether it was more or a little less.

Q. Were the Big Four the incorporators of the Sapphire Mining & Cutting Corporation?

A. They were supplying the gems to them. I don't know whether they had—I don't know how they held their shares. I never saw the books on that.

Mr. Samuels: I didn't ask you that.

A. I don't know.

Q. Did you deal with the Big Four independently of the Sapphire Mining & Cutting Corporation?

* * * * *

A. Well, I couldn't just recollect now, Mr. Samuels. I had a contract from some group of men I met, and I met

them about three times; they gave me a contract, and I left for Australia I think soon after that, and I was in Australia for quite a while after that; two or three years I think I was in Australia, or possibly eighteen months, and came back, and then went back again.

Mr. Samuels: Switching from that subject for a moment:

Q. Do you remember whether in any one of the years 1919, 1920 or 1921, you returned from Australia to San Francisco or New York, and you brought or had shipped in any one of those years a very large amount of mechanical sapphires; that they were placed in five-gallon oil cans and sealed up and stored in the residence of Mr. Lobree?

A. It is just possible. I was shipping stuff on and off.

Q. I asked you if you remembered that?

A. No, I can't remember it, sir.

Q. You can't remember that at all?

A. No, sir.

Q. Do you remember whether or not at your request by letter or telegram Mr. Lobree in one of the years—either in 1921, 1922, or 1923—shipped that material to New York for you?

A. That I couldn't say, sir.

Q. You have no recollection of that?

A. No. I was shipping stuff backwards and forwards all of the time. I wouldn't have any recollection of that particular parcel, sir, going back that far.

Q. Did you undertake to sell any of that material located domestically—the material I referred to as mechanical material—located domestically either in San Francisco or in New York—to the Big Four as you have designated them, or to the Sapphire Mining & Cutting Corporation?

A. What stuff are you referring to? What particular parcel are you referring to?

Mr. Samuels: Will you read the question, and it will identify it; you will find it is identified in the question.

(Pending question read.)

A. No, they didn't buy industrial-mechanical sapphires. They only bought blue stones.

Mr. Meyberg: Did you hear the question, Mr. Heiser? Did you attempt to sell it?

A. No.

Mr. Meyberg: If you didn't, say so. He didn't ask you what they bought.

A. I beg your pardon.

Mr. Meyberg: My understanding is that he didn't.

* * * * *

Mr. Samuels: Q. Did you know a man in New York by the name of Janchower, I think it is pronounced, or something similar to that?

A. Yes, sir. He was an industrial mechanical sapphire dealer

Q. Did you not have a substantial amount of your mechanical sapphires then stored in San Francisco shipped to New York in an endeavor to sell some to Mr. Janchower?

A. No, I did not do business with Mr. Janchower. Mr. Lobree did a little business with Mr. Janchower.

Q. Do you mean for himself?

A. I was out of the country. No, with my merchandise.

Q. With your merchandise?

A. Yes. It is all hazy, because I was away in Australia, and when I came back he told me about this gentleman. I don't think Mr. Janchower paid us for quite a large amount of material. The poor chap died since, I think. Mr. Lobree met him, and Mr. Lobree sold him.

Q. Then you did not have any substantial amount—by which I mean a ton or more—of mechanical sapphires at any time shipped upon your instructions from the City and County of San Francisco to New York—

A. Oh, yes, I did.

Mr. Samuels: Now, I haven't finished my question.

A. I beg your pardon.

Q. (Continuing:) —for the purpose of sale by you in New York as one lot or in substantial quantities?

A. There was a large amount of industrial sapphires shipped to New York, as I previously stated.

* * * * *

Mr. Meyberg: Go ahead.

A. Approximately two tons.

Mr. Samuels: Q. Approximately two tons?

A. Yes. It may have been a little over that; I think maybe it was a little over two tons.

Q. And they weren't sold, and they were stored in the Lincoln vaults in New York?

A. They were brought here, and I don't know how long they rested here, and then they were shipped right on to New York, if I remember correctly, and they were placed in the Lincoln vaults.

Q. Yes.

A. I think it was called the Lincoln vaults.

Q. And were they reshipped to San Francisco?

A. No, sir.

Q. They were not at any time reshipped to San Francisco?

A. No, sir.

Q. And they did not constitute any portion, then, of the shipment of industrial sapphires which was made by you to Los Angeles in the year 1928?

A. No, sir.

* * * * *

(Thereupon an adjournment was taken until Wednesday, August 27th, 1941, at 10:00 o'clock A. M., and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Wednesday, August 27th, 1941, 10:00 A. M.

* * * * *

Mr. Samuels: Q. Mr. Heiser, you testified that in 1914 you brought with you one or more packets of commercial sapphires.

A. No, sir, I didn't say that. I said I brought a small package.

* * * * *

Mr. Samuels: Q. Did you bring any commercial sapphires or any opals or zircons with you?

A. I brought some cut opals and rough opals.

Q. In 1914 or 1915?

A. In 1914 or the early part of 1915. I cannot give you the exact date.

* * * * *

Mr. Samuels: Q. Did you declare them to the Custom Office?

A. Yes, sir, and paid duty.

Q. What duty did you pay?

A. I can't recollect now. It is on record there. They have a record as to that.

Mr. Meyberg: He hasn't asked you whether it is on record.

* * * * *

Q. Did you import from Australia at other times during the years 1914 to 1928 any other material which you have been handling, we will say, exclusive of industrial sapphires?

A. Yes, sir.

Q. Did you declare them each time?

A. Yes, sir.

Q. And paid duty each time?

A. Yes, sir.

Q. Can you remember any specific amount?

A. No, sir.

* * * * *

Mr. Samuels: Q. Is it your claim, Mr. Heiser, that you included in the shipment in 1928 to Los Angeles or dispatched there a separate shipment, or took there yourself certain of the gems which you handled, such as commercial sapphires, opals, zircons, and that they were part of the material upon which you brought your suit against Mr. Woodruff, and in which you procured a judgment against him?

* * * * *

Mr. Meyberg: Do you understand the question?

A. No, I couldn't understand it. It seems to be twenty questions to me.

Mr. Samuels: I will ask it anew. You took your cue very quickly, Mr. Heiser.

A. Please don't be personal with your insinuations here. You insinuated you were going to put me in jail.

Mr. Samuels: I insinuated that I was going to put you in jail?

A. Yes, you have all over the country.

Mr. Samuels: You are entirely wrong, sir. I haven't mentioned your name in connection with jail, and this can go on the record if you want it. I haven't thought of you until this matter came before me. Do you know that?

A. No, I don't know it.

Mr. Meyberg: Just a moment.

Mr. Samuels: I am telling it to you definitely now.

A. Well, I would question whatever you said.

Mr. Samuels: I don't care what you question. I don't care to discuss anything with you at all. You are here as a witness to be examined.

A. That suits me.

* * * * *

"Q. You claim, do you not, Mr. Heiser, that a portion of the quantity of material which was the subject matter of the suit in the United States District Court in Los Angeles consisted of commercial sapphires, opals and zircons?")

A. Yes.

Mr. Samuels: Q. Did you pay duty upon those commercial items?

A. I think I told you before the Queensland Government shipped those in, sir.

Q. You didn't tell me that.

A. I told you half a dozen times yesterday.

Mr. Samuels: I ask that be stricken as not responsive.

A. I told you half a dozen times yesterday. This gentleman is trying to trip me up.

Mr. Meyberg: Just a minute, Mr. Heiser, please. You can answer that question. He asked you did you pay the duty

on it yourself? Now, answer it "Yes" or "No." You either did, or you didn't.

A. No.

Mr. Meyberg: That is right.

Mr. Samuels: Q. Do you know whether any duty was paid on it?

A. I wasn't in the country at the time. I don't know when the majority of that was landed.

Q. Do you claim that the commercial material which I have just referred to, and which you assert was a portion of the material upon which you obtained the judgment in the District Court of the United States in Los Angeles, was the material which, or a portion of the material which was shipped by the Government of Australia or Queensland for purposes of exhibition at the Panama-Pacific International Exposition?

Mr. Meyberg: Just a minute. That is objected to as being purely argumentative, and wholly immaterial.

Mr. Samuels: I am identifying the material with the material which he claims he did not pay duty on and which was shipped by the Government. It is entirely material, and the purpose of it must be obvious—the purpose of the question must be obvious. Do you understand the question, Mr. Heiser?

A. No, I do not, sir.

* * * * *

Mr. Samuels: We will enlarge the question.

Q. (Continuing:) Or to permit of your selling of the same?

Mr. Meyberg: Do you understand the question?

A. Not very clearly. It is a very long question.

Mr. Samuels: Will you read the question again with that addition to the witness, please?

(Pending question read as follows:

"Q. Do you claim that the commercial material which I

have just referred to, and which you assert was a portion of the material upon which you obtained the judgment in the District Court of the United States in Los Angeles, was the material which, or a portion of the material which was shipped by the Government of Australia or Queensland for purposes of exhibition at the Panama-Pacific International Exposition, or to permit of your selling of the same?"

* * * * * *

A. Yes, I believe it was, all of it.

Mr. Samuels: Q. Did you pay any duty on the same?

Mr. Meyberg: That is objected to as wholly immaterial, and having been asked and answered previously. Go ahead.

Mr. Samuels: That is all right.

A. Mr. Samuels, for your information there is no duty in the United States on any class of rough industrial gems.

Mr. Meyberg: He has not asked you that.

A. I beg your pardon. So that you don't pay duty if it doesn't exist.

* * * * * *

Mr. Samuels: Q. What was the name of that corporation in New York, or of persons who lived in New York who formed a corporation in which I believe you stated one or more of the Big Four of New York were associated?

A. Mr. Hopkins.

Q. Pardon me?

A. Mr. Hopkins.

* * * * * *

Mr. Samuels: Do you recall the question, Mr. Heiser?

A. No, I would like it read.

Mr. Samuels: Read the question to him.

(Pending question read.)

A. No.

Q. Do you know of a corporation by the name of Sapphire Mining & Cutting Corporation, 665, 5th Avenue, New York?

A. Yes.

Q. Were you associated with that company in any way?
A. I supplied them with gems.
Q. You did supply them with gems?
A. From Australia.
Q. Did you own stock in that corporation?
A. I was supposed to own stock, but it was never delivered to me.
Q. How long did you supply them with gems?

* * * * *

A. I couldn't tell you exactly how long; I couldn't say. Possibly three years, but I couldn't tell you exactly.
Q. What is your best recollection—instead of "possibly"?
A. That is twenty-one years you are going back.
Q. Have you any recollection on the subject at all?
A. We shipped from Australia every month, but I couldn't tell you exactly.

Mr. Samuels: I didn't ask you that.

Q. Have you any recollection at all?
A. I have a recollection that we shipped from Australia, but the quantity, time or period I couldn't tell you.
Q. All I asked you was the length of time you shipped.
A. No, I don't know.
Q. You don't know?
A. No.
Q. That corporation is defunct, is it not?
A. No. Two of the gentlemen, or one of the chief gentlemen connected with it died, and the boys didn't get on so well after that. There was a terrible slump in the market, and it went out of existence, I think. It was eight or nine years ago, I think, but I couldn't tell you exactly.
Q. Well, your connection with it terminated, did it not, when you discontinued supplying it with gems?
A. Yes. We shipped the gems from Australia to them. I didn't supply the gems. I shipped them from Australia myself direct to New York City. Now, the dates and times and places I can't give you that, sir, because my memory is not that good.
Q. It was a stock selling venture, was it not?
A. No, there was no stock sold in the company at all that I know of.

Q. Were you to receive 50% of the stock?

A. No, sir.

Q. What percentage were you to receive?

A. Only a small portion, but I have forgotten exactly, now.

* * * * *

Mr. Samuels: Q. Now, in the month of August, 1928, what stocks of your material did you have in the United States, and where?

Mr. Meyberg: That is objected to as being wholly immaterial, and not within the issues here.

A. I couldn't recollect now, sir.

Mr. Samuels: Q. You can't recollect at all?

Mr. Meyberg: Let me have that question again.

(Record read.)

Mr. Meyberg: All right. It has been asked and answered. Go ahead.

Mr. Samuels: Q. Do you recall having a stock of material at the Wells Fargo Bank?

A. Now, that I am not quite sure about, sir. In 1928 I had material there after the Fair, and it was there for quite a few years, and we were moving backwards and forwards, and I don't know whether all of my material was there all of the time or part of the time; it is hazy. It goes back quite a few years.

Mr. Samuels: Let me see if I can't refresh your recollection.

A. And I had stuff in various places, and I can't recall exactly whether it was in the Wells Fargo Bank all of the time or part of the time. I have always been under the impression that it was, but yet it is still hazy to me; I am not sure.

Q. Did you inquire of the Wells Fargo Bank yesterday or this morning as to that?

A. No, sir. I was there about ten days ago, and asked them, and they said they couldn't give me any records on it;

they said they couldn't give me any more information. I asked two or three gentlemen about that.

Mr. Samuels: Q. I am referring to page 268 of the transcript of the testimony adduced in the proceeding revaluation—

* * * * *

Q. (Continuing:) —of the materials which were the basis of the judgment rendered by Judge Cosgrave in the District Court of the United States for the Southern District of California, Central Division, and I will call your attention to the following questions and answers— this is line 21:

"Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

"A. Yes."

Do you recall that question and answer?

* * * * *

Q. Now, do you recall the question, Mr. Heiser?

A. No, I do not.

Mr. Meyberg: Read the question, Mr. Reporter.

(Pending question read.)

A. Well, I don't recall that question, but that is a fact—they did come in for the Exposition.

Mr. Samuels: Q. "Q. And they have been in the country ever since?

"A. Yes."

Do you recall that question and answer?

A. No.

* * * * *

(Record read.)

Mr. Samuels: Q. You have no recollection of testifying that they had been in the country ever since?

A. I can't recollect now, sir.

Q. What?

A. I can't recollect now.

Q. Is it a fact that they were in the country ever since, or were they taken out of the country by you?

A. No, they were here. They wouldn't have been taken out—I don't think they would have been taken out.

Q. Do you mean here in San Francisco?

A. Well, it is very hard to remember, sir.

Q. I am asking you what you mean by the word "here."

A. In America.

Q. They may have been taken out of San Francisco by you in whole or in part?

A. I am not sure, sir. It is hard to remember.

Q. I will read the question commencing on line 3, page 269, of the same record:

"Q. Where were they between 1916, say, the beginning of 1916 and 1928?

"A. They were the majority of the time in the Wells Fargo Bank."

Do you remember the question and the answer?

A. No, I can't remember the question or the answer, sir, but I think that is about right. They were the majority of the time, or part of the time.

Q. You do not recall so testifying, though, as I read it to you?

A. I can't recall so testifying, no, but it is a fact that they were either in one of the Wells Fargo banks, but I am not sure whether the majority was there all of the time.

Q. Were they in the Wells Fargo Bank at the time of shipment in whole or in part in August, of 1928, and being part of certain material shipped by you to Los Angeles?

A. I am not sure, sir.

Q. Have you any recollection on the subject?

A. No, sir.

Q. Referring to page 239 of the same proceedings, I will read to you the following questions and answers—on line 16:

"Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the Exposition in 1915 down to 1928?"

Objection urged by Mr. Meyberg; overruled. And this is the answer on line 23:

"A. I think in the Wells Fargo Nevada Safe Deposit Company.

"Q. In San Francisco?

A. Yes, sir."

Do you recall those questions and answers?

A. I do not recall them.

Mr. Meyberg: Just a minute.

A. Pardon me.

• • • • •

Now, you will read the question to the witness, and we will get his answer.

(Question and answer read.)

Mr. Samuels: Q. Were they at that time in the safety deposit vault of the Wells Fargo Bank?

Mr. Meyberg: May I also add the further objection that counsel failed to read the question before the answer:

"Q. By Mr. Peterson: Where were they?"

Mr. Samuels: I read that.

Mr. Meyberg: "By Mr. Peterson: Where were they?

"A. I think in the Wells Fargo Nevada Safe Deposit Company.

"Q. In San Francisco?

A. Yes, sir."

Mr. Samuels: That is just a repetition of the previous part that I read, but be that as it may.

Q. Were they at that time according to your best recollection in the Wells Fargo Bank in San Francisco?

A. I think they were.

Q. You think they were?

A. Yes. I don't think they were there all of the time as I previously stated.

Q. Now, I am calling your attention to page 12 of a transcript of proceedings in the District Court of the United States for the Southern District of California, Central Division, before Honorable Earl E. Moss, Referee, in the matter of Golden State Gem Company, Bankrupt, No. 13393-J:

marked on the cover "Original," and certified to by C. N. Olson, Official Reporter, and particularly page 12 of the transcript.

"A. I went up with Mr. Smith and showed—"

This answer is purporting to come from Mr. Heiser:

"A. I went up with Mr. Smith and showed the gems to Mr. Woodruff and Mr. Woodruff said they were fine and good and could be used in some partnership arrangement they had. I was not interested in that. I was more interested to get my money. I sold the stuff and got the check from Mr. Woodruff for it. Then Mr. Smith told Mr. Woodruff, said I had just come from Australia and we were discussing the matter and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived. Mr. Woodruff was very much interested and Mr. Smith said 'You know with your money and my 2,000 customers, which are some of the richest men in America, and with Heiser's stock here we could make a wonderfully-fine business.'"

Do you remember so testifying before the—

Mr. Meyberg: Just a minute—

Mr. Samuels: One moment. I haven't finished the question.

Q. Do you remember so testifying in the proceeding I have referred to before the Referee in the bankruptcy matter?

A. How long ago was that?

Mr. Samuels: A counter-question is of no significance.

Q. Do you remember so testifying?

* * * * * *

Mr. Samuels: For your edification, Mr. Heiser, the testimony that I have read to you was given on April 14th, 1932, at Los Angeles, California, and the answer was made in conformity with the following questions, commencing on page 11 of the transcript: "M. E. Heiser, Direct Examination.

By the Referee:

"Q. You are the claimant in this matter?

"A. Yes, your Worship.

"Q. Now, will you start with your first negotiations for the delivery of these sapphires and zircons—what was it, sapphires entirely?

"A. No, sapphires and opals and jades, your Worship.

"The Referee: Relate just what occurred?

"A. Starting in July, 1928, I came to the Golden State Gem Company of California and I met Mr. Calvin Smith. I just arrived from Australia, your Worship, had been out on a three-year mining campaign and I asked Mr. Smith was he in the market for any gems.

"Q. That was in the place of business of the Golden State Gem Company?

"A. Yes, and I sold him—

"Q. And what did he say when you asked if he was in the market?

"A. He said he was in the market and he said he could not purchase them, he didn't have the money, he didn't have the cash but he said his backer would if I went with him to his place, and we went to Mr. Woodruff's home and I showed Mr. Woodruff the gems Mr. Smith had selected from my various parcels—

"Mr. Meyberg: Pardon me. Those are not the gems in controversy?

"A. No. His Worship asked me to tell what happened.

"Mr. Meyberg: I just wanted him to understand that."

Then the answer is what I read to you at length, and in which you stated "and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived."

Mr. Meyberg: Objected to as no foundation laid: immaterial.

Mr. Samuels: Q. Do you want to see the transcript?

A. Yes.

Q. What?

A. Yes.

Q. You would like to see it?

A. Yes.

Mr. Samuels: Here is your answer starting at page 12. (Indicating to witness.)

* * * * * *

Mr. Samuels: Q. Do you recall so testifying at that hearing?

A. No, I can't just recall that, sir.

Q. You can't recall whether or not you testified that "I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived"?

A. No.

Mr. Meyberg: Objection on the ground no foundation has been laid, and it has just been asked and answered.

Mr. Samuels: Will you read the question to the witness?

(Question and answer read.)

Mr. Samuels: Q. Had some sapphires just arrived in San Francisco which were in a vault referred to by you?

Mr. Meyberg: Just a minute. Objected to as immaterial.

Mr. Samuels: Q. By "arrived at that time," you meant just arrived in the year 1928?

Mr. Meyberg: Objection on the ground no foundation has been laid.

Mr. Samuels: Will you answer the question?

A. I can't recall.

Q. You can't recall?

A. No.

Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles in the month of August, 1928, or whether they were sapphires earlier in your possession, is that correct?

A. I couldn't say, sir.

* * * * * *

Mr. Samuels: One moment. Do you understand the question, Mr. Heiser?

A. No.

Mr. Samuels: You did not understand it when you answered it?

A. No.

Mr. Samuels: Read the question, Mr. Reporter.

(Question and answer read as follows:

"Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles in the month of August, 1928, or whether they were sapphires earlier in your possession, is that correct?

"A. I couldn't say, sir.")

A. I wonder if he would re-read that question again?

Mr. Samuels: Certainly.

A. That was a long question.

Mr. Samuels: All right. Read the question again, Mr. Reporter.

(Question read as follows:

"Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles—")

Mr. Samuels: Strike out "of".

Mr. Meyberg: Now, counsel wants to strike out a portion of his question. I objected on the ground the question was unintelligible.

(Pending question and answer re-read.)

Mr. Meyberg: Do you understand that question?

A. No, it is still foggy to me, because you refer to "sapphires arrived" and "stuff brought in there", and I can't understand the question. Now, maybe it is I am stupid. I have been sitting here for a day and a half listening to your twists and turns.

. . . . . .

Q. I will ask you this question: Referring to the shipment to Los Angeles made in the month of August, 1928, which was the subject matter of the action brought by you against Woodruff in the United States District Court in Los Angeles, and upon which you obtained a judgment, I will ask you whether any portion of that shipment consisted of sapphires which had arrived at or about that time of shipment, or shortly earlier, or constituted a portion, or any part, or the whole of the material which you had stored in the Wells Fargo Bank, or elsewhere, after your termination of your exhibit at the Exposition?

. . . . .

A. No, I don't understand the question.

Mr. Samuels: Read the question to the witness, kindly.

(Pending question read.)

Mr. Samuels: Do you understand the question?

A. Not very well, now, either.

Mr. Samuels: I will break it in parts so that you will understand it.

Q. Referring to the shipment of your material to Los Angeles in the month of August, 1928, did any portion of it consist of sapphires which had recently arrived from Australia?

A. Would you mind giving me that last question again?

(Pending question read.)

A. It is possible. It could have been.

Mr. Samuels: I did not ask you if it was possible. I ask that the answer be stricken as non-responsive.

Q. Can you state whether or not any portion of it consisted of sapphires which arrived from Australia?

A. Any portion of what?

Q. Of that shipment?

A. What particular shipment are you speaking of? That is what I mean.

Q. The shipment made by you or on your behalf in the month of August, 1928, to Los Angeles.

A. It is possible that I could have had sapphires that were just recently brought into the country.

Mr. Samuels: I did not ask you if it was possible. That is conjecture on your part.

Q. I asked you whether according to your best recollection any portion of that shipment—and you have the shipment in mind now, just referred to—consisted of sapphires which had then recently arrived from Australia?

A. I think I had with me at that time approximately 50 or 100 parcels of rough blue sapphires and some zircons and opals that I brought in with me, and I think I took them to Los Angeles, and some of them—since you read that to me, it comes back to me—I think some of those I sold to Mr. Smith and Mr. Woodruff.

Q. When I refer to the shipment—so that it may be before you with greater certainty—I am referring to the shipment which was the subject matter of your action in the District Court of the United States for the Southern District of California, Central Division, and upon which you procured a judgment.

A. I beg your pardon.

Q. What?

A. I say I beg your pardon. I misunderstood that, you see.

Mr. Samuels: Well, I am clarifying it for you.

A. Now, would you mind re-reading that question to me?

Mr. Samuels: I will ask you the question again.

Q. Referring to the shipment last identified—and you understand it now, do you?

A. Yes, sir.

Q. (Continuing:) —did any portion of it consist of sapphires which had recently arrived—and by recently I refer to approximately the time of August, 1928—from Australia?

A. No, I don't think so, sir.

Q. Was that shipment made up entirely of material which was a portion of the shipment received by you for exhibition at the Exposition?

Mr. Meyberg: And sale—for exhibition and sale—for all purposes.

Mr. Samuels: For all purposes.

Mr. Meyberg: Yes.

Mr. Samuels: For all purposes.

A. To the best of my knowledge it all was, yes, sir.

Q. Did you receive in San Francisco any other material than that last referred to—that is, that which was shipped in 1914 or 1915—from the year 1915 to 1928?

* * * * *

(Pending question read.)

A. I think there was a lot of stuff shipped around that period, sir, but I couldn't give you the exact dates or times on it now. I was away mining, as you read to me a moment ago; I had been away on a mining campaign for several years, and during that period I would naturally have shipped materials, but to give you the dates, I couldn't.

Mr. Samuels: Q. Would you ship it to San Francisco?

A. I would ship it to different parts of the world, sir.

Q. I asked you as to San Francisco.

A. It is just possible.

Q. It is just possible while you were away in Australia you shipped material to San Francisco?

A. San Francisco, London, Germany, or all over the world.

Q. To whom would you consign it in San Francisco?

A. I wouldn't remember now, sir.

Q. You have no recollection at all whom you would consign material to in San Francisco if you shipped any from Australia while you were there, is that right?

A. You are speaking of ten or fifteen years ago.

Q. I asked you for your recollection.

Mr. Meyberg: Is it from 1921 or 1923, or around that time?

Mr. Samuels: What is that?

Mr. Meyberg: What is the date you are referring to?

Mr. Samuels: I am referring to the period from 1915 to 1928.

A. I couldn't remember that far back.

Q. Was the material which you state was shipped to San Francisco between 1915 and 1928 stored separately from that which was stored in the Wells Fargo Bank of this city?

A. Oh, it naturally would have been.

Q. Where was it stored, do you know?

A. That I couldn't say, no, sir; I told you yesterday I couldn't recollect. I tried hard to recollect, but I can't do so.

Q. Can you state anything with respect to the aggregate quantity of the material which was shipped between 1915 and 1928?

A. No, sir.

Q. To San Francisco, of course?

A. No, sir, I couldn't remember that.

Q. Did you have any selling agent or agents in San Francisco while you were in Australia or absent from the United States?

* * * * *

(Pending question read.)

A. At what time?

Mr. Samuels: Q. From the year 1915 to the year 1928.

A. I can't recollect, sir.

Q. You do not know whether you had a selling agent, or not, during that period of time?

A. No, sir, I can't recollect.

Q. Do you recall whether you made any sales, or whether any sales were made for you within the time named of material which was stored or located in the City of San Francisco while you were absent from the United States?

A. There is no doubt I did. There was a lot of stuff sold, but I couldn't tell you to whom, or when and how it was sold, sir.

Q. Well, who would sell that during the period of your absence?

A. I would ship from Australia, as I previously said, to the different people. I shipped to Germany, England, France, and Switzerland.

Q. I am talking about material located here in San Francisco—your supply of material which you had here.

A. I don't think that I sold any stuff from supplies of material when I was out of the country, sir.

Q. And the sales which you referred to as having been made while you were out of the country were on orders taken by you before you left the country?

A. That is how it is generally done.

Q. And were filled with materials you shipped from Australia?

A. That is the way it was generally done, sir.

Q. Why didn't you use any of your stock here?

Mr. Meyberg: Objected to as being purely argumentative, and calling for an answer not within the issues here.

Mr. Samuels: Will you answer the question, please?

A. I don't know why. I didn't do it that way, that is all. Just why do you light your cigar with your right hand? It is the same question. It is your habit, I suppose.

Mr. Samuels: I am not going to move to strike that out. I want the Court to observe your method of answers, and I am very pleased to have that in the record. It is but typical of your method of answering questions.

A. Well, I didn't do it with an idea of being impertinent, sir. Please don't misunderstand me. It is just my way of answering that question.

Mr. Samuels: Now, page 33—. Pardon me, just one moment, gentlemen.

Mr. Meyberg: I don't blame you for taking time with all the documents you have there.

Mr. Samuels: We will get that at the lunch hour.

Q. Did you make any sales from any of your material stored in San Francisco following the termination of your exhibit at the Exposition, and to the month of September, 1928? Do you understand that question?

A. Not right off. I will ask the reporter, if I may, if he will please repeat it.

(Pending question read.)

* * * * *

A. After the Fair for several years I was making sales in many parts of the world, as I said yesterday, and I made some sales all over this country—in San Francisco and in Los Angeles, and all over America I have sold stuff; I have been selling cut merchandise and rough merchandise all over the country, but to recall the specific time, date and place, and to whom, I couldn't remember.

Mr. Samuels: Q. I asked you from the stock you had in San Francisco.

A. I have been bringing stuff in at different times.

Q. How much have you brought in—could you tell me at all?

A. No.

Q. Could you tell me within the limits of $10,000.00 and $100,000.00?

A. I couldn't. I would be guessing, sir.

Q. You couldn't tell whether it was $10,000.00 even?

A. I wouldn't like to say now.

Q. It could have been more, or it could have been less, is that correct?

A. Oh, it could have been more than $10,000.00.

Q. How much more than $10,000.00?

A. I couldn't say.

Q. Was it more than $20,000.00?

A. I don't want to guess. You are only encouraging me to guess, and I don't want to guess.

Mr. Samuels: I don't want to encourage you to guess.

A. You are trying to coax me when I haven't a definite recollection. I don't want to have you coax me.

Q. Could it have been more than $20,000.00 worth of material that you have brought in?

A. I am not sure.

Q. You are not sure?

A. No.

Mr. Samuels: It is 12:00 o'clock. I suppose we should adjourn. What time do you want to resume?

Mr. Meyberg: Will 2:00 o'clock be agreeable?

Mr. Samuels: Will you be here promptly?

Mr. Meyberg: Yes.

Mr. Samuels: If you will, kindly.

(Thereupon an adjournment was taken until 2:00 o'clock P. M., Wednesday, August 27th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Wednesday, August 27th, 1941, 2:20 *A.* M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: Where were we last on this, Mr. Reporter?

(Record read.)

Q. When you refer to the mines in Australia, Mr. Heiser, do you refer to mines owned by you or leased by you?

A. What kind of mines do you mean, sir?

Q. I am talking now about the mines involving the character of gems which are the subject of your claim or the judgment upon which the claim is based.

* * * * *

A. Nearly all the mines you get in Australia are lease-owned from the Crown. You call them patented in this country. We call them freehold in Australia. The majority of them are leased.

Mr. Samuels: Q. Yours come within what category?

A. Within the category of leasehold mines.

Q. How many leasehold mines did you have in the years 1927 and 1928?

Mr. Meyberg: Objected to as hearsay; no foundation laid; immaterial. I still assume that you will connect it up in some way.

Mr. Samuels: Yes.

A. Well, I couldn't tell you. In 1927 and 1928?

Mr. Samuels: Yes.

A. Oh, I had miles of country, sir. I couldn't tell you the exact amount of leases.

Q. When you say 1927 and 1928, do you mean different parcels separately leased from the Government, or leased as a unit from the Government?

A. I had leases from the Government, and I had grants from the Government, and I had what is called a private miner's lease—I don't know how many I had, sir; I couldn't tell you; it is impossible, but they extended for miles in area.

Q. And were you operating all of them during the two years in question?

A. 1927 and 1928? Now, wait a minute. 1927 I was over there, and 1928 I was over here. I can't tell you the exact date of arrival. I was not here very long. I left in September. I was just trying to get some papers to revive my memory on this, sir, and I couldn't find all the papers I was looking for, but some time in September, 1928, I left for London, and I couldn't have been here very long because my passport at that time was only permitted to go through the country; and in 1927 and 1926, and I think 1925, I was in Australia. We were mining then, and I had two dredges operating; I had a steam shovel operating, and I had a big staff of men working for me.

Q. That mine you refer to, was that mine known by any particular name?

A. Oh, no. We were going to start naming them, but we changed our mind about it because it was getting complicated. They generally called them the Sapphire Valley Mines. I practically owned the Sapphire Valley in New South Wales at that time.

Q. Under leases?

A. Yes, because—

Mr. Samuels: We don't need explanations if we can avoid it.

Q. Was it known as Heiser Burmah Sapphires, Limited? Was that one of the mines you referred to?

A. Yes, sir.

Q. That was a corporation, wasn't it?

A. I am not sure whether it was a corporation or a syndicate, now, sir. That was quite a little while ago.

Q. Well, do you not know that a number of shares in that company, whatever it was, had been sold and were owned by a number of persons?

A. It is very possible, sir, in Australia, but it could have been a syndicate just the same. They sell shares in a syndicate, you know.

Q. Now, you say you were operating the mine with a great many men, and with two dredges, and a steam shovel, in 1927?

A. To the best of my recollection, yes, sir.

Q. Then you were not in need of funds at that time to operate, were you?

A. In 1927?

Q. Yes.

A. Yes. I needed a lot of money then for a ditch line. We were figuring on a ditch line of twenty miles onto a diamond property.

Q. That was the only purpose you needed money for, was it?

A. No, we needed it for sapphires also. The leases that the Government grant are granted with a provision that certain work is done in a certain time, and if you have not got the work done you have to have the machinery on the property in order to fulfill the lease provisions.

Q. Otherwise the lease is lost?

A. You lose the lease if you don't keep up with the provisions of the lease. Nearly all Crown leases have those clauses in them. That is so in order that no one man can hold the country and have it tied up.

Q. But you were working a very substantial number of men you say, and two dredges and a shovel in that year, and you had the funds with which to operate upon that basis, isn't that right?

A. Yes, sir.

Q. I am going to show you a letter, and it bears date, "14/4/27;" the letter is headed "M. E. Heiser, Sapphire Valley, via Inverell, N.S.W., Australia" that is typed—and ask you whether that is your signature on the bottom of the second page?

. . . . . .

Q. Is that your signature, Mr. Heiser?

(Document exhibited to witness.)

A. Yes, I think it is my signature.

Q. Do you think it is, or do you know it?

A. Well, I am not sure. The way that "M" is made, I am not sure.

Mr. Meyberg: Take a very good look at it, and take your time, and make up your mind whether it is or it isn't your signature; and if you can't tell, you can say so.

Mr. Samuels: That is right.

A. I am not sure, Mr. Samuels. That "M" doesn't look exactly like mine, or the "r".

Q. What is your best judgment as to whether it is your signature or not?

A. It was written ten years ago.

Mr. Samuels: I am not asking you when it was written.

Mr. Meyberg: No, it was written fourteen years ago.

A. Well, it was written fourteen years ago.

Mr. Meyberg: Take a look at it, and make up your mind whether it is your signature, or not.

Mr. Samuels: Q. I am asking you according to your best judgment whether that is your signature, or not.

A. Part of it looks like my signature, but the "M" and the "r" don't look like my writing.

Q. Does the rest look like it?

A. Part of it looks like it, but the other part doesn't.

Q. Which part doesn't look like your writing?

A. The way the "e" and "i" come together, and the spreading of the "s" and "e", and that "r" doesn't look like it, or the "M"; it doesn't look like my signature, yet it might be. It was quite a few years ago, and you know my mind and eyes are not that good that I can tell after so many years.

Mr. Meyberg: Now, why don't you read the letter into the record?

A. Some of it looks like it, and some of it doesn't.

Mr. Meyberg: Just take a look at the letter.

Mr. Samuels: Will you read this letter which I have just

identified for the purpose of the record, and you may disregard the lead pencil notations.

Mr. Meyberg: May I see the letter.

Mr. Samuels: Disregard any lead pencil markings, and answer whether or not that letter and the typewritten content were written by you to the addressee, Mrs. Maud James Loller.

(Thereupon the witness and Mr. Meyberg examined document.)

Mr. Meyberg: What is the question?

(Pending question read.)

* * * * *

A. It could be my signature, and I could have sent it, but I don't recollect having sent the letter. The signature doesn't look like my signature, Mr. Samuels, but it could be.

Mr. Samuels: I am offering in evidence the letter just submitted to the witness, excluding all lead pencil notations and markings upon it, and limiting the letter to the typewriting and the handwritten signature of the witness, if it be his signature.

Mr. Meyberg: Objected to—

Mr. Samuels: I am not finished yet. I am offering it in evidence, and I am going to ask a question with reference to it. I ask that this be marked as "Objector's Exhibit 3."

Mr. Meyberg: Now, are you through with your offer?

Mr. Samuels: Yes. I am going to ask some questions on it. Do you want to object to the introduction first?

* * * * *

(Letter dated 14/4/27 to Mrs. Maud James Loller from M. E. Heiser, marked "Objector's Exhibit No. 3.")

Mr. Samuels: Q. Now, Mr. Heiser, calling your attention to this letter, on the first page, and the language, "Because I have the dredge here—", did you have one dredge or more than one dredge at that time?

A. I had a large dredge there, and I had another dredge

in a place called Murray's Water—one of the largest suction dredges in the country.

Q. Where is Murray's Water located?

A. In New South Wales.

Q. In New South Wales?

A. Yes; it was unassembled. We had to assemble it, but I didn't have sufficient capital for that.

Q. Now, is your statement in this letter, "But I haven't the working capital, I need about $6,000 now," correct?

A. To the best of my—

* * * * *

Mr. Samuels: What was the witness' answer, Mr. Reporter?

(Record read.)

Q. To the best of your what?

A. To the best of my recollection. I couldn't recollect now, Mr. Samuels. That was a long time ago that you are asking me about.

Q. You don't know whether it was correct, or not? You don't know whether in 1927 you needed $6,000.00 to operate?

A. I might have needed $6,000.00 to put another dredge up.

Q. I didn't ask you that question. I said you didn't need $6,000.00 to operate?

A. I might have needed $6,000.00 to operate, but I don't think I was that short in money at that particular time.

Q. Did you need $6,000.00 at that time for any other purpose than to put up another dredge?

A. Not to my knowledge. I am not sure. You are asking me something as to 1927.

* * * * *

Q. Following the language I just read to you, "and we could produce sapphires from this amount to get us going on a small way", was that correct at that time according to your best recollection?

A. If I wrote that, there is no doubt it was true at that particular time, sir.

Q. All right. "—which would be the means of selling enough stock in the company, and from the sale of that stock

"A. Yes.

"Q. Where were they between 1916, say, the beginning of 1916, and 1928?

"A. They were the majority of the time in the Wells Fargo Bank.

"Q. In San Francisco?

"A. Yes, sir.

"Q. They were owned by you all the time?

"A. Yes, sir."

Now, here are the questions and answers that I am going to bring to your particular attention:

"Q. How did it come that they were lying there without action on the part of anyone?

"A. I did not need them. It was a reserve, sir. We mine the stuff in Australia and ship it to different parts of the world, and don't touch it. For instance, in the Lincoln vaults I had a parcel for ten years, and didn't touch it. I have a parcel in London we don't touch."

Do you recall testifying to that effect? Do you want to know the year of the testimony?

A. Yes.

Mr. Samuels: That was in 1939, wasn't it, Mr. Meyberg?

Mr. Meyberg: Yes, in June, of 1939.

Mr. Samuels: June, 1939.

Mr. Meyberg: At the time the trial was had before Judge Cosgrave as to value in this proceeding.

Mr. Samuels: That is right.

A. I remember testifying then, yes.

Q. And do you remember testifying to that effect?

A. No, I can't remember because there were so many hundreds of questions asked me. It is very difficult for me to remember those questions.

Q. Is it true at the time referred to, in 1916 and 1928—that is why I gave you the context—you did not need the material stored in the Wells Fargo vaults?

A. I beg your pardon. Would you mind re-asking that?

Mr. Samuels: Would you read the question?

(Pending question read.)

A. No, I didn't need them at that time.

Q. Did you at that time have materials stored in the Lincoln vaults?

A. If I said there that I had, then I had it stored there, sir.

Q. I am not asking you that. I said did you?

A. I must have.

Q. Your best recollection is you did?

A. Yes, that is my best recollection.

Q. Where are the Lincoln vaults?

A. In New York.

Q. Where are they in New York. Was it a portion of a bank?

A. It was a place that was pulled down. It was on 42nd Street, near the Grand Central Station at that period of time, and it was pulled down to build a larger building there.

Q. Do you know what you had stored, we will say, in 1928, in the Lincoln vaults in New York—the character and the extent of the material?

* * * * *

A. I couldn't tell you exactly what I had there, Mr. Samuels, but I did have a lot of material there.

Mr. Samuels: Q. You can't recollect the different items entering into it, or the character of them?

A. No, sir.

Q. I mean whether it was cut or rough—whether it was mechanical or commercial?

A. Oh, it was all classes, sir.

Q. You don't know which predominated?

A. No, I couldn't tell you offhand; I could in any way.

Q. You couldn't say anything about the extent of the material there?

A. No. There was a considerable amount, but I couldn't give you the weights; I couldn't tell you approximately, but it was considerable.

Q. What do you mean by "considerable"?

A. Oh, quite a lot.

Q. What do you mean by "quite a lot"? That is a relative term as Mr. Meyberg has probably said before.

get working on a big scale and then try to control the sapphires of Australia."

Was that statement correct according to the best of your recollection?

Mr. Meyberg: * * * Go ahead and answer, Mr. Heiser.

A. I can't recollect exactly so far back, Mr. Samuels.

Mr. Samuels: Q. What is your best recollection?

A. I am telling you it is impossible for me to recollect.

Q. Then you have no recollection on the subject?

A. Not that far back, no, sir.

Q. Now, then, was it necessary for you to sell stock in a company at that time to get working on a big scale?

* * * * *

Q. Was it necessary at that time, according to your best recollection for you to get $6,000.00 to get going on a small way, as you state in your letter?

Mr. Meyberg: Objected to—

Mr. Samuels: Q. (Continuing) Or as it is stated in the letter?

* * * * * *

Mr. Samuels: Will you answer the question, Mr. Heiser?

A. I can't recollect, as I said before, it is so long ago, Mr. Samuels.

Q. Then you don't know whether or not it was necessary for you to get $6,000.00 to get going on a small way, is that right?

A. I haven't any recollection of this today. I told you I don't recollect because it is so far back.

Q. I am not asking you whether you have any recollection. I asked you whether it was necessary for your to get $6,000.00?

A. I can't remember now.

Q. (Continuing:) To get going on a small way at that time?

A. I can't remember now.

Mr. Samuels: All right. That will be introduced in evidence as "Objector's Exhibit 3."

Q. Referring further to the letter, and on page 2, I call your attention to the language: "Would it be possible for you to lend the company $6,000 for 18 months, so that we could get started and you can be paid from the sale of stones from the mine?" What company do you refer to?

* * * * *

Mr. Samuels: Q. Do you know the company that was referred to in that letter?

A. I couldn't remember.

Q. You can't remember?

A. No, sir.

Q. Now, further with respect to the language which I have read to you, was it necessary for the company—whichever company it was—to borrow $6,000.00 simply to get started?

* * * * *

Mr. Samuels: What is your answer?

A. I can't remember the incident that occurred so far back.

Mr. Samuels: All right, sir.

Q. The language further in this letter, in the next paragraph:

"Mr. B. Schlessinger, of S. F., is to form the company for us and I know that if he does and you lend a helping hand we will soon be going on a big way, so please do as you think best, partner, but I am anxious to start producing and that would be the means of selling a lot of stock."

Were you contemplating at that time forming a stock company to sell to the public?

* * * * *

Mr. Samuels: You may answer.

A. I can't recollect so far back, Mr. Samuels.

Q. You don't know whether you were contemplating at that time forming a stock company and selling to the public?

A. I can't remember about that letter at all. I don't know anything about it.

Q. I am not asking you anything about the letter.

A. Or the contents of the letter or the conditions that prevailed at that time.

Q. I am asking you this: Whether you were contemplating that Mr. Schlessinger, or anybody else in San Francisco, or elsewhere, was to form a company for you to permit of your procuring funds to operate any one of your mines—your Australian mines, and to that end selling stock?

* * * * * *

A. I can't remember the conditions prevailing at that time, sir.

Q. You can't answer "Yes" or "No," then?

A. No, sir.

Q. Referring specifically to the language: "—but I am anxious to start producing and that would be the means of selling a lot of stock", were you not producing at that time?

* * * * *

A. I must have been producing then, sir.

Q. Have you any recollection of producing at that time?

A. Naturally, I was over there, and I was producing when I was over there.

Q. I didn't ask you that. I say, have you any recollection of producing at that time?

A. I said earlier this afternoon to you that we were over there, and we were producing in 1927. I think I have already answered that question.

Q. I am asking you in the light of this letter—

A. I can't recollect anything connected with that letter. You asked me whether I was producing around that time, and I say we were producing in 1927. I have no recollection in connection with that letter at all, but in 1927 there is no question in my mind that we were producing.

Q. On a big scale, is that right?

A. We had a dredge and a steam shovel, and another dredge waiting to be put up.

Q. You were operating on a big scale, were you?

* * * * * *

Mr. Samuels: * * * What is your answer to the question, Mr. Heiser?

A. We were producing sapphires, but what your opinion

might be on a big scale, and what my opinion is, might be two different things.

Q. What is your idea of operating on a big scale?

A. We had a dredge there and a steam shovel, and we were producing sapphires.

Q. How many men did you have employed?

A. Oh, I don't know; right offhand I couldn't tell you, but we had, I think, three shifts running on the dredger.

Q. How many men to a shift?

A. Oh, about four men.

Q. And on what property was that?

A. That was on the top mine.

Q. What was the name of the mine?

A. It had no name, as I said before.

Q. What area did it embrace?

A. Oh, I couldn't tell you offhand, sir, but it covered quite a considerable amount of ground.

Q. How much would you say is considerable?

A. Oh, acres and acres.

Q. How many, approximately? You don't have to tell me the exact number. Give me the number according to the best of your recollection.

A. I think there were eight claims in that block. Now, I am not positive, sir: I think there were eight claims in that block. I don't know the exact acreage in fact. There were eight private claims—I think there were eight private claims—there might have been nine, and there might have been seven in that particular block, and I couldn't tell you the exact number, but they were from ten to forty acres each.

Q. Well, then, you do remember, do you not—

A. That is hazy.

Mr. Samuels: Pardon me.

A. I beg your pardon.

Q. You do remember, do you not, that in 1927 you were operating a certain number of claims, that you had certain machinery at work, that you had three shifts employing four men each, but you do not remember whether or not any of the contents of that letter is accurate, is that right?

A. Well, one might write a letter ten or fifteen years ago.

but it would be almost impossible for me to remember what I had written fifteen years ago in a letter.

Q. I am not asking you what you wrote in the letter. I read certain clauses to you—

A. I—

Mr. Samuels: Listen to me, please.

A. I beg your pardon.

Mr. Samuels: I think it would be better if you listened to the question.

Q. I asked you each time whether certain things were correct, and you said you had no recollection.

A. That is right.

Q. I was not asking you in those questions whether you wrote those things, or whether they were correct—you understand that, do you not?

A. Yes.

Q. Now, I am asking you whether you can remember certain things at the same time in connection with certain claims, and how it is you can explain certain things, but yet you can't remember any of the contents of this letter concerning which I asked you questions—is that correct?

* * * * *

Mr. Samuels: I will ask you this:

Q. Can you explain, Mr. Heiser, how you can recollect the extent of your operations in 1929—pardon me; change that to 1927—on the eight pieces of ground referred to by you in Australia, and why you have no recollection of the accuracy of any of the contents of this letter, "Objector's Exhibit No. 3"?

* * * * *

A. I was just going to ask Mr. Samuels a question off the record.

Mr. Meyberg: No.

A. Then on the record: Why did Mr. Samuels make two statements about 1917, when he meant 1927? It is the same answer. Because you can't recollect. Now, Mr. Samuels, you cross-examined me, and you mentioned 1917 twice, and your friend here corrected you. Why did you make that

mistake? Why didn't you recollect? You couldn't recollect for two minutes, and you expect me to remember back twenty years.

Mr. Meyberg: Can you answer that question, Mr. Heiser I will put this question to him, and if he can answer it it will save a lot of time by letting him answer it.

Mr. Samuels: No. I will finish this inquiry. I want to make some progress here.

Mr. Meyberg: What was the question, Mr. Hart?

(Pending question read.)

A. Pardon me again. Would you mind giving me those dates again—the change of those dates?

Mr. Meyberg: Can you answer that question, Mr. Heiser—

A. Yes.

Mr. Meyberg: (Continuing:) —as to why you can remember one thing and not another?

A. Yes. In writing a letter, it is an incident—you dictate and sign it and send it off. The mines were my everyday life's work; I was there morning, noon and night on the property, and you would remember that because it was every day, but you wouldn't remember writing a letter. Maybe you would, and maybe you wouldn't, but I wouldn't.

Mr. Samuels: I asked you about the accuracy of the statements contained in the letter.

A. That is why I can't remember it.

Mr. Meyberg: The man stated that he didn't even remember sending the letter, although he may have sent it, and therefore he didn't remember the contents of it.

Mr. Samuels: Let us proceed further.

Q. With respect to the operations in 1927 of these eight parcels of ground which you have just testified to, are those according to the method of operating mines in Australia—large operations or small operations?

* * * * *

Mr. Samuels: What is your answer, Mr. Heiser?

A. Well, some would call it large operations, and others would call it small. It would all be a matter of opinion, sir.

Q. What is your understanding of operations of that size?

• • • • •

A. I would say it was a large operation.

Mr. Samuels: Q. A large operation?

A. Yes.

Q. Now, Mr. Heiser, during this period in 1927 in addition to operating the mines to the extent you may have, were you buying sapphires or any of the gems that you handled from persons or companies in Australia?

• • • • •

A. I couldn't say offhand, but it is just possible I was.

Mr. Samuels: Q. You have no recollection on that subject?

A. No, sir. Again I will say that was a long way back.

Q. Well, is it not the fact that on each of your trips to Australia on and after 1917, to and including the early part of 1928—I believe you testified you returned to the United States then—that you would buy your material in Australia or elsewhere?

A. We bought mined material, but I couldn't tell you the exact time, place or weights.

Q. I didn't ask you that. I just asked you if you bought materials?

A. I used to buy materials there, yes, sir.

Q. Did you buy more than you produced from your mines?

A. That I couldn't tell you offhand, sir.

Q. You couldn't tell me that?

A. No.

Q. You have no recollection of that?

A. No, not at present.

Q. Now, in 1927 and 1928 where did you have stocks of merchandise in the United States outside of what you have testified to in San Francisco?

• • • • •

A. As I said yesterday, sir, I couldn't recollect. I told you that three or four times yesterday. You asked me that same question yesterday, and I told you I couldn't recollect.

Mr. Samuels: I asked you—

A. You asked me three or four times yesterday the same questions, and I answered your questions, and now you are asking me the same questions today. I can't recollect where I had it stored.

Q. Did you have any stored outside of San Francisco during the two years in question?

* * * * *

Mr. Samuels: Q. What is your best recollection, Mr. Heiser?

A. I can't recollect, sir.

Q. You have no recollection?

A. No.

Q. Do you recollect whether you had any in New York?

A. Offhand, no, sir. There is no doubt I had, but I wouldn't like to say "Yes," and I wouldn't like to say "No." I can't recollect. There is no question but that I had material in London, Africa, Germany, and all over the world, and I can't recollect all those places at this time.

Mr. Samuels: I will see if I can refresh your recollection on that.

Q. Calling your attention, Mr. Heiser, to pages 268 to 269 of the testimony given by you in action No. 7,256-C Law, which was upon the proceeding of revaluation before Judge Cosgrave in Los Angeles, I will ask you if you recall giving the testimony which I am about to read to you, but first I want to advise you of a preliminary question so that you may get the context, so first I am reading from page 268:

"Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

"A. Yes.

"Q. And they have been in the country ever since?

"A. Yes.

"Q. You were there in charge of that exhibit?

A. I will say over a ton of material.

Q. A ton of material?

A. Yes.

Q. Do you mean of all kinds?

A. Yes.

Q. But I am talking now about commercial. Do you know the quantity of commercial entering into it?

A. No, I couldn't give you the exact amount. I wish I could, but I can't.

Q. You can't tell me?

A. No, I can't. That was around the end of 1928?

Q. Yes, that is right.

A. Up to the end of 1928 or around 1929.

Q. I refer to the year 1928.

A. Yes.

Q. And if there were any changes after that time you can tell me.

A. Up to the end of 1928—

Mr. Meyberg: I happen to know that a portion of a ton was still there in 1935.

Mr. Samuels: I ask that be stricken.

Mr. Meyberg: If it will help anybody's recollection, or help in these proceedings.

Mr. Samuels: Oh, no, that is highly improper, Mr. Meyberg. I don't know that you are a witness in this case, or under oath, or testifying, and I ask that the volunteer statement of counsel be stricken from the record.

Q. You shipped, did you not, or caused to be shipped in the month of August, 1928, certain material from San Francisco to Los Angeles?

A. Yes, sir.

Q. Where were you in the month of August, 1928? Were you in the United States?

A. Yes, sir.

Q. Were you in San Francisco at the time of shippment, or were you in Los Angeles?

A. I am not sure whether I was—I wasn't in San Francisco, I don't think, during that period. I was in Los Angeles, and I think I was down in Arizona, and I think I was in

Nevada. I was moving backwards and forwards quite a lot, sir, at that particular period.

Q. I show you what purports to be a photostatic copy of an original bill of lading dated August 9, 1928, of the Steamer "Harvard," for 36 sacks mechanical corundum, weight 4,325 pounds; received from E. A. Lobree, and signed "E. A. Lobree, Shipper, by Mrs. Lillian Heiser," and ask you whether you have ever seen that photostatic copy before?

* * * * *

Mr. Samuels: Look at the instrument, and answer the question as to whether or not you have seen the original of that photostatic copy.

A. I am not sure.

Q. You are not sure?

A. I have seen so many papers in the last few months that I couldn't say for sure. Do you realize how many questions you have asked me in the last few days? Could you answer as to how many questions you have asked me in the last two days?

* * * * *

You can answer "Yes" or "No" whether you have ever seen the original of this photostatic copy?

A. This is a photostat, isn't it?

Mr. Samuels: Yes.

A. Now, I don't remember having seen a photostat like this.

Mr. Samuels: I said the original.

A. I may have seen it, but I can't recollect.

Q. You don't remember it?

A. No.

* * * * *

Mr. Samuels: Q. Did you know or authorize the shipment at or about August 9th, 1928, of the material described or referred to in this bill of lading, "Objector's Exhibit No. 4"?

* * * * *

A. Well, I haven't a very clear recollection on that, Mr.

Samuels, but there is no question in my mind that I ordered the stuff to be shipped.

Q. What is your best recollection on that subject?

A. I can't recollect it, sir.

Q. Well, if you ordered stuff to be shipped, from what storage did you order it to be shipped?

A. I couldn't say, sir.

Q. You couldn't say that?

A. I couldn't remember, no.

Q. I observe a valuation of $500.00 upon that material. Do you know whether you authorized that, or not?

A. I couldn't say, sir; I couldn't remember.

Q. Do you remember anybody who would place a valuation upon it without your authority?

A. Any one might have, sir.

Q. Well, it was done by some one man in your behalf in shipping, isn't that correct?

A. If I may explain about that: When we ship stuff to any part of the United States, we generally put a very low insurance on it because it has as much protection if you send it with $500.00 as if it were $50,000.00; it is all the same protection.

Q. What do you mean by insurance?

A. The valuation. Excuse me. If you put a $50,000.00 valuation or a $5,000.00 valuation or a $500.00 valuation, it has the same kind of protection. For instance—

* * * * *

Mr. Samuels: Will you read his answer to me?

(Record read.)

Mr. Samuels: Q. If your will note the language in this original bill of lading: "Not Insured. Shippers desiring Carrier to Insure at expense of shipper, owner and/or consignee must show insurance value and sign below."

* * * * *

Mr. Samuels: Q. Now, did you communicate to any one the valuation to place upon the shipment of corundum that was made from San Francisco to Los Angeles at or about this time?

A. Not to my knowledge, sir.

Q. You did not?

A. I said not to my knowledge.

Q. I see.

A. I thought you repeated "You did not?"

Q. Not to your knowledge?

A. That is what I said.

Q. Do you recall giving your wife—. I assume Mrs. Lillian Heiser is your wife?

A. Yes, sir.

Q. Do you recall giving your wife any instructions at or about this time with respect to a shipment of this material from San Francisco to Los Angeles?

A. No, sir, I can't recall incidents in connection with that. Pardon me. I don't know that she shipped it, but it says so there, but I don't know that even.

Q. Well, did you receive any material of this character at Los Angeles within two or three days after August 9th, 1928?

A. There was material which arrived in Los Angeles, but I couldn't tell you the exact date now offhand, and it was placed in the—

Mr. Samuels: No. I just asked you if you received it. Never mind where it was placed.

A. We received it right at the bank—at the vaults, and we put it right in the vaults, at the United States National Bank.

Q. Who did?

A. The men who carried it for me. They had to carry it. It was heavy stuff. It weighed over two ton, I think that says there.

Q. That is correct—4,325 pounds.

A. They did the carrying.

Q. Was it placed in your hands, Mr. Heiser?

Mr. Meyberg: When he says he received it, he means they carried it over to the United States National Bank, and the men carried it.

Mr. Samuels: Q. It was delivered to you?

A. It was delivered to me.

Q. Was it delivered to you at Los Angeles?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. What was embraced in this 36 sacks of mechanical corundum?

A. Well, the exact details of it, sir, I couldn't recollect now, but I have a recollection that the drays—there was a big dray that came up to the curb, and I was notified about it—the bank notified me, and I came over to the bank. It is very hazy to me, sir. It was a long time ago. I remember going over there, and the stuff was carried backwards and forwards. They made several trips because the men carried the stuff on their backs.

Mr. Samuels: You have answered the question not once but several times.

Q. Do you not know that the freight rates of carriers are controlled in part by the valuation to be placed on the valuation of a shipment?

A. I don't know anything about that at all, sir.

Q. I show you what purports to be a receipt for freight delivered of the Pacific Electric Railway Company, dated August 13, 1928, of 36 sacks of mechanical ore, as it says here; insurance value $500.00, and at the bottom, "McMorrie" or "McMarrie"—I can't decipher which one it is—"Heiser," or "Heisen. Pio Truck Co—McArdle," with annexed photostatic copy to the following effect: "No. 13393-J. Re Golden State Gem, Bankrupt. Obj"—"Objection," I assume that is—"Heiser, Trustees. Exhibit No. 2. Filed 4/22 1932. Moss, Referee." And there is a further exhibit form, apparently deleted by signs or lines through it. I will ask you whether or not you have ever seen the original of which purports to be a copy?

(Document handed to the witness.)

Mr. Meyberg: You have no objection to my looking at it, have you, Mr. Samuels?

Mr. Samuels: Certainly not. I asked him first, and handed it to him, and then you can look at it.

(Document handed to Mr. Meyberg.)

Mr. Meyberg: It looks like somebody played tit-tat-toe on it.

(Witness examining document.)

Mr. Meyberg: Are you asking him if he recalls ever having seen this or the original of which that purports to be a photostatic copy?

Mr. Samuels: Yes.

Mr. Meyberg: I presume that is preliminary to something, too. Objected to for the reason it is immaterial whether he has ever seen it or hasn't. You may answer the question, Mr. Heiser.

A. No, I don't ever recollect having seen that.

Mr. Samuels: Not the copy, but I am talking about the original or a receipt of that character.

A. No sir.

Mr. Meyberg: It is possible that you may have seen it, Mr. Heiser?

A. I may have seen it, but I don't recollect having done so.

Mr. Samuels: Q. You have no recollection of it?

A. No.

Mr. Meyberg: Is that your signature on the bottom?

A. I don't believe it is.

Mr. Samuels: No, I don't believe that is his signature.

Mr. Meyberg: It isn't?

A. No.

Mr. Samuels: He would spell his name correctly, wouldn't he?

Q. Do you recall now whether or not the corundum which is referred to in the bill of lading, "Objector's Exhibit No. 4," was delivered at the bank you referred to in Los Angeles by the Pacific Electric Railway Company?

A. That I couldn't recollect.

Q. Would your recollection be assisted, Mr. Heiser, if I

called to your attention the language on this photostatic copy, "Point and date of shipment, 8 10 28."? Is there a number there?

Mr. Meyberg: August 10, 1928.

Mr. Samuels: One moment. I am thinking of something else. "E. A. Lobree." Let me call your attention to that.

(Mr. Samuels indicating to Mr. Meyberg and the witness.)

Mr. Meyberg: Now, what is your question?

Mr. Samuels: Q. Does that assist your recollection with respect to the receipt of it?

A. No, I can't recollect having seen that. I may have done so, but I have no recollection of it.

Mr. Samuels: Then we will offer in evidence as "Objector's Exhibit No. 5" the receipt just submitted to the witness.

Mr. Meyberg: To which we object on the ground it is immaterial, and no foundation laid, and not the best evidence.

(Receipts for Freight Delivered, dated August 13, 1928, marked "Objector's Exhibit No. 5.")

Mr. Samuels: Q. Do you recall, Mr. Heiser, whether as a portion of the shipment of mechanical sapphires which you state was delivered to you in front of or at the United States National Bank in Los Angeles, there was any commercial material?

A. I couldn't recollect the contents today, sir, of just what was in that parcel at that particular time; I couldn't recollect it exactly as it was.

Q. No. I am saying in addition to that was there any additional material?

A. Additional to what, sir?

Q. To the corundum. I have told you that. The question is clear. Read it to him. Do you want to have the question read?

A. Yes, please.

Mr. Meyberg: What was the question, Mr. Reporter?

(Pending question read.)

A. I think I made several shipments down to that bank, sir. It would be impossible to remember one particular shipment.

Mr. Samuels: One moment, please. You have answered the question.

Q. Your suit No. 7,256-C instituted by you against Leonard Woodruff in the United States District Court, Southern District of California, Central Division, was based upon, if I recall correctly, in addition to mechanical sapphires, a certain quantity of commercial sapphires, opals, zircons, and a piece of jade.

* * * * *

Mr. Samuels: Q. (Continuing:) Now, were the commercial items I have just named deposited with or stored with the United States National Bank at the same time that the mechanical sapphires were stored there?

* * * * * *

A. To the best of my recollection I had quite a lot of other gems there.

Q. Do you mean you had them sent from San Francisco, or that you had them in your possession in Los Angeles prior to the 13th day of August, 1928?

A. I am not sure, sir, on that; I can't make a statement on it, but I know I had the gems there.

Q. You know you had what gems there?

A. Different classes of gems—jade, opals, zircons, and sapphires.

Q. You refer to uncut commercial gems?

A. Uncut stones and gems.

Q. What is the distinction between uncut stones and gems?

A. I beg your pardon. Commercial stones and other gems—opals, sapphires and zircons, to be exact.

Q. Yes. That is what I asked.

A. I beg your pardon.

Q. They were all uncut, were they not?

A. Yes. I had some cut stones in the bank.

Q. I am not asking you about that.

A. You asked me if I had any stones in the bank, and I said yes, I had a lot of cut stones there.

Q. Did you make any sales of any of your commercial gems which were stored in the City and County of San Francisco, or in your possession in the City and County of San Francisco during the year 1928 and prior to August 13th, 1928?

A. Well, in 1928 I was in Australia, and in 1928 I was in America, and in 1928 I was in England, and in 1928 I was in Germany, and now it covers a lot of country, and it is almost impossible for me to answer all these questions you are jamming into 1928.

Q. You were in the United States at least from April, 1928, to and including August, 1928, were you not?

A. Yes, sir.

Q. That is correct, is it not?

A. I think it is correct. To the best of my knowledge it is correct.

Q. Yes. Now, during that period of time did you make any sales of the commercial material which was stored or in your possession in the City and County of San Francisco or Los Angeles?

* * * * * *

A. Well, I can't remember at that time if any were sold, or not, Mr. Samuels. It is very, very hazy to me, because it was such a crowded year that it is impossible for me to remember incidents like that. I could have done it, and yet I wouldn't remember it. It is impossible for me to remember it. You can readily understand that I left Australia, and I brought my family here—I think I brought my family here, or I met them here, and I left and moved on to London, and then I went to Germany and then to Paris.

* * * * * * *

Q. Did you not claim to have sold some of your commercial material during the month of May, 1928?

* * * * * *

A. I don't recollect whether I did or not.

Q. Don't you remember bringing a suit against Mrs. Graves?

A. Yes, I had a suit against Mrs. Graves, but I don't remember what passed there.

Q. Don't you remember—

* * * * *

Mr. Samuels: What is your answer, Mr. Heiser?

A. I said I didn't recollect, sir.

Q. You have no recollection as to whether you brought the suit?

A. I know I brought the suit, but I couldn't recollect the conditions that prevailed around the suit, and what I sold during that period.

Q. Do you recollect whether you sued upon a claim of sale to the defendant in that action of your gems for $40,000.00?

* * * * *

A. No—pardon me—they weren't. Now, Mr. Samuels—

Mr. Samuels: One minute.

Q. What do you mean by "they weren't"? Weren't they commercial gems? Didn't you sue for sapphires and other material?

* * * * *

A. They were cut gems that we sued for.

Q. Is not a cut gem a commercial gem?

A. They could have been commercial.

Q. Was I wrong in my designation?

A. Yes, you were very wrong.

Q. Why?

* * * * *

A. A commercial gem is a commercial stone, and a jewel is for a person's adornment. They are two different things as different as chalk and cheese. You couldn't make a lead pencil without a sapphire; you couldn't have telephones, clocks or submarines without a sapphire.

* * * * *

Mr. Samuels: How can I identify, according to technical distinctions, Mr. Heiser, material which is intended solely for industrial purposes, and material which may be made up into rings or bracelets, or any type of jewelry?

A. One you would say was gems and gem material, and the other you would say was industrial or corundum. You could have a commercial sapphire or a commercial ruby.

You could have the best gem in the world, and it would be corundum, or you could have corundum and it would still be industrial, and it would also be a gem.

Mr. Samuels: I am trying to distinguish between industrial and commercial. Industrial couldn't be a gem?

A. Yes, it could.

* * * * *

Mr. Samuels: Q. Now, do you recall whether or not that action against Mrs. Graves was based on the alleged claim by you of the sale to Mrs. Graves of some $40,000.00 worth of your gems?

A. Yes, it was, sir, according to the best of my recollection—gems delivered according to the best of my recollection, yes, sir.

Q. Did those gems come from your San Francisco stored collection in the vaults of the Wells Fargo Bank, or were they stored elsewhere?

A. I couldn't say exactly where they came from now, sir. That was ten or twelve or fifteen years ago.

Q. Do I understand your testimony that those were cut stones?

A. Cut gems.

Q. I am talking about 1932.

A. Please don't correct me, Mr. Samuels.

Mr. Meyberg: Counsel can make a mistake.

Mr. Samuels: I referred to the year 1928 when I asked you with reference to between April and August, of 1928, if you will recall.

A. No, I can't recall the conditions in relation to it—where they came from, or what part they came from.

Mr. Samuels: All right.

Mr. Meyberg: I understand both of you are talking about sapphires that were cut stones.

A. Yes, cut and polished.

Mr. Samuels: I don't know whether they were cut or polished. The result was that there was a judgment against the plaintiff to the effect that there was no sale of stones.

A. To the best of my knowledge there were a lot of cut stones, and there was one bag of very fine blue sapphires.

Mr. Meyberg: Just a minute. There is no question before you. Let us not just keep on talking here. There is no question propounded to you. Pardon me. That can go out. Mr. Samuels and I were talking here. Now, go ahead, Mr. Samuels.

A. I beg your pardon.

Mr. Meyberg: Go ahead, and let us get along here.

Mr. Samuels: Q. This material which was delivered to you at the bank in Los Angeles on or about, we will say, the 13th day of August, 1928, was placed in storage in that bank, wasn't it?

A. Yes, sir.

Q. That was the United States National Bank?

A. That is right, sir.

Q. In whose name was the storage receipt issued?

A. I couldn't tell you today, sir. I haven't the slightest idea. Possibly my own.

Q. What is your best recollection on the subject?

A. I haven't any recollection on that at all.

Q. It is your recollection, is it not, that it was stored in the name of either yourself, or yourself and California Gem Company, or yourself and Walter Calvin Smith, is that true—one of those combinations?

A. No, I haven't any recollection on that at all, sir.

Q. You haven't any recollection on that at all?

A. No. No matter what I did, I wouldn't be able to remember that, sir.

Q. In your complaint No. 7,256-C, the action which has been identified any number of times in the record—so we will limit ourselves simply by the number of the action—

Mr. Meyberg: That is the action of Heiser vs. Woodruff upon which the judgment was rendered?

Mr. Samuels: There is no purpose going beyond that. I assume that is the only complaint No. 7,256-C filed by Mr. Heiser against Woodruff.

Mr. Meyberg: That is right.

Mr. Samuels: That is correct, is it? The record won't show a nod of the head. Have you got the answer, Mr. Reporter? You simply nodded your head.

Mr. Meyberg: There was only one complaint in that action, and that was the complaint upon which this judgment was rendered.

Mr. Samuels: I know that, but I am trying to prevent going through the necessity of describing it each time.

Mr. Meyberg: You can refer to it as the complaint in action No. 7,256-C, filed by Mr. Heiser against Woodruff, which was the complaint on which judgment was rendered in this action.

Mr. Samuels: The more you can get in that judgment the stronger your case, I suppose.

Q. I will refer particularly to paragraph VI—

Was there more than one cause of action?

Mr. Meyberg: Yes, there are three causes of action, I think, if I remember correctly.

Mr. Samuels: I am referring to paragraph VI, on page 2. You allege that you were the sole and exclusive owner of certain raw gems known as sapphires, zircons, opals and jade. And by "raw" I assume you meant uncut, is that right?

A. Yes, sir.

Q. And you specify 35,000 ounces, more or less, mechanical industrial rough sapphires; 1200 ounces blue sapphires rough; 1,000 ounces star sapphires rough; 1200 opals black and light, rough—

A. Pardon me. 1200 ounces it says, doesn't it? Not 1200.

Q. 1200 ounces.

A. You said 1200.

Q. Then I missed it.

A. I beg your pardon.

Q. 1200 ounces opals black and light, rough; 1,000 ounces —I see why, "ounces" is stuck in in ink here; 1,000 ounces

zircons rough; 1 piece jade 28 pounds. Now, do you know whether—

* * * * *

Mr. Samuels: Q. Now, do you know whether the blue sapphires, star sapphires, opals and zircons, or any of them, were included in the same storage with this 35,000 ounces of mechanical industrial rough sapphires?

A. They were all in the same room according to the best of my knowledge—in the vault downstairs in the United States National Bank. I think it was at 8th and Spring Streets, in Los Angeles, but I am not positive of the exact corner; I think it was there. Since then the bank has closed, but it was downstairs. As I tried to tell you before, the men carried each of these packages down on their backs.

Q. And that was open storage, was it?

A. In a vault.

Q. I mean it was not in a safety deposit box?

A. It was a big room where the bank kept their money—in the same big room.

Mr Samuels: I am not questioning that. Will you please listen to my question.

Q. The material I have just referred to was not placed in a safety deposit box, was it?

A. Oh, it was impossible to do that.

Q. They were very large quantities?

A. Yes, very large quantities.

Q. And they were in what form of container?

A. Now, according to the best of my knowledge the industrial stuff was in sacks—ordinary sacks; and we had a habit of sending the gems—

Mr. Samuels: Never mind. You have told me what you had. Never mind your habit.

A. I beg your pardon.

Mr. Samuels: I think your counsel will tell you that you have answered according to the best of your knowledge that they were in sacks.

A. No. I said the industrials were in sacks.

Q. The industrials were in sacks?

A. The industrials were in sacks, and the gems, such as the blue sapphires and the star sapphires and the zircons, we had a habit of always placing those in tins and sealing them, and placing the tins within a sack.

Q. You said you had a habit of doing that. Was that true in this case according to the best of your knowledge?

A. According to the best of my knowledge, yes.

Mr. Samuels: I ask that what the witness testified to as "habit" be stricken out as not responsive.

Q. Your testimony is, as I take it, they were in tins placed in a sack, is that right?

A. The gem material was in tins placed in sacks, and the industrials were in bags ordinarily because they were cheaper material.

Q. Now, then, were they all stored there according to the best of your knowledge at one time—these different items that I called to your attention—or were they stored there at different times?

A. I have a hazy recollection that we took some of the tins, that were in bags up in a car separately.

Q. From where?

A. From down here, but that is very hazy, Mr. Samuels?

Q. Who are "we"?

A. Well, my wife was driving the car—or, I am not sure whether it was my wife—it was a friend of mine that came from Australia. At that time I brought Australian teddy bears over here, and Mr. Archie Johnson—

Mr. Samuels: This is all immaterial.

A. You asked me who are "we," and I am trying to explain to you.

Mr. Samuels: You have answered.

A. I can't say who it was, then, because there were five or six men riding to Arizona, Nevada and Los Angeles with me, all during that period.

Q. Were you in the car?

A. One or two of the times I was in the car, yes.

Q. What is that?

A. One or two of the occasions I was in the car.

Q. I am talking about the time of transportation of any of this material which I have designated.

A. I am trying to tell you that we took a couple of those bears along, and we had those gems in the back of the car, and the bears were on top of them; the bears were loose in the car.

Q. When you say "we," whom do you mean?

A. I can't remember.

Q. Were you present?

A. Yes, naturally.

Q. And you started from where?

A. Now, I am not positive what part of the city we started from.

Q. Did you start from San Francisco?

A. Yes, we started from San Francisco.

Q. All right. And when was it by comparison with the 9th day of August, 1928?

A. That I couldn't tell you. I wish I could tell you, but I can't remember that. I have been trying to remember it since speaking to you. I can't remember it; I wish I could.

Q. Was it before or after that date?

A. I was trying to think of that bear thing.

Q. Was it before or after the date I mentioned?

A. I couldn't tell you, sir. I think—

Q. One moment. Was the material taken from the vaults of the Wells Fargo Bank?

A. That I can't remember, sir. I have been trying to remember it. I have been going over papers which I have; I have been here trying to refresh my memory on it.

Q. You haven't found any papers?

A. Yes, I found one paper which I will show you in a minute or two.

Q. Where is the paper you wish to show me, Mr. Heiser?

A. I can't think where it was, though.

Q. Do you wish to show me a paper?

A. Yes, I have a paper which I would like to show you, and that I ran into. It is about the Exposition and the materials.

(Thereupon the witness handed document to Mr. Samuels.)

Q. Oh, you mean a newspaper article?

A. Yes, sir.

Mr. Samuels: Very interesting.

A. Well, it just shows about the Fair.

Mr. Samuels: It is not before the Court at the present moment. If your counsel desires to submit it at any stage, it will be subject to proper objections.

Mr. Meyberg: You asked him for it.

Mr. Samuels: I asked him if he wanted to show me a paper.

A. And you insisted upon it.

Mr. Samuels: I insisted upon it?

A. You asked me three times for it.

Mr. Meyberg: Now, he has shown you a newspaper clipping about himself at the Exposition.

Mr. Samuels: Don't try to get it before the Court in that manner. You can offer it in due time.

Mr. Meyberg: I don't think it is material, but it shows that he was at the Exposition.

Mr. Samuels: I don't deny that he was at the Exposition.

Mr. Meyberg: And that he was an exhibitor there.

Mr. Samuels: I haven't denied that he was an exhibitor.

Mr. Meyberg: It is a clipping from a San Francisco newspaper.

Mr. Samuels: We move that the remark of counsel as to any contents of a newspaper clipping be stricken from the record as hearsay, improper and wholly immaterial.

Now, what was the last question? Oh, yes. We were discussing, or trying to get from you whether any of this material was removed from the Wells Fargo vaults, and you said you didn't know.

A. I don't know whether it was in the Wells Fargo Bank vaults then, or where it was, because I am not sure that it was there all of the time at the Wells Fargo Bank.

Mr. Samuels: All right.

A. I don't know what vault it may have been in at that particular period of time.

Q. Did you have material of this type in any other place in the City and County of San Francisco in the month of August, 1928?

A. Well, I told you yesterday several times that I couldn't recollect. You asked me that question about a dozen times—that same question. I have been telling you I can't recollect it. I have been trying to do so.

Q. What material did you take with you on this trip in the automobile from San Francisco—I assume it was to Los Angeles, was it?

A. Yes. Well, I said before I think we took it in the automobile, but it is very hazy; I am not sure, but I believe we took the gem material down there.

Q. How much of the gem material?

A. I couldn't say right offhand, sir, it is very hazy.

Q. Did you take all of the gem material on this trip—the 1200 ounces of blue sapphires, the 1,000 ounces star sapphires, the 1200 ounces of opals, black and light, rough; 1,000 ounces of zircons, and 1 piece of jade, 28 pounds—did you take them all on this one trip?

A. That I am not sure of, sir. I have a hazy recollection that we took it down by car.

Q. Took it, or took what?

A. Took the gems down by car, but I am not sure of it. I can't recollect exactly how we took them.

Q. Did you drive?

A. No, I didn't drive. I very rarely drive in this country, because I am an Australian, and drive on the left, coming from Australia.

Mr. Meyberg: All he asked you was if you drive, and if you don't, all you have to say is "No."

A. I very rarely drive.

Mr. Samuels: That doesn't mean anything when you say you drive on the left.

(Portion of record deleted by consent of counsel.)

Q. You don't know when you started on that automobile trip, do you, if you took it?

A. I beg your pardon?

Q. I say you don't remember the date of the start of that automobile trip, do you?

A. That is not what you said. "If I took it," you said. I said I took it. I don't like that.

Mr. Meyberg: I think you stated you didn't recollect whether you went down on that trip, or not.

Mr. Samuels: That is right. You said you didn't know whether you went, or whether your wife drove.

A. You asked me if I took it.

Mr. Samuels: Then I was inaccurate in my statement.

A. Well—

Mr. Samuels: Now, one moment.

Q. Who else was in the car besides your wife, if you recall?

A. I didn't say my wife was in there. I said I thought she probably was, but I wasn't sure.

Q. What is your best judgment on the subject?

A. I can't recollect. I tried to explain it to you.

Q. Have you any judgment on the subject? Have you any belief on the subject?

A. Well, I went down there, and as I told you I took the bears. I think I made two or three trips, and these bears were with me, and the gems were with me on one of those trips.

Mr. Samuels: I move to strike that answer as not responsive to the question. I will ask you this question, and will you please listen to the question:

Q. Have you any recollection of whether your wife went with you on that trip?

A. No, sir, I can't recollect it.

Q. Have you any recollection of who else was with you on that trip, if anybody, or whether you drove alone?

A. No. There were people with me, but I can't recollect who they were.

Q. You do not know the name of any one who was with you?

A. One chap was from Australia, but I can't think of his name now.

Q. Have you any recollection of the make of the car, Mr. Heiser?

A. It was a big car. We had a Dodge, and we had a—it was a big car. They changed the name of it—they changed the name of the car, because it had some adverse—

Q. Have you any recollection of the name of the car? If you haven't just say "No." That is all.

A. I am trying to think, sir. I can only do my best.

Mr. Samuels: I interrupted you, because I want you to answer the question.

A. You are asking me the make or name of a car that I had twelve years ago. I am trying to do the best I can.

Mr. Samuels: I can tell you the make of every car I had.

A. I noticed you didn't have the right date several times.

Mr. Samuels: Go ahead and answer the question.

A. It was a Jewett. Yes, that was it. It was a big Jewett: it was super-powered, and a Graham-Paige engine was in it. That is right.

Q. Was it open or closed?

A. It was a closed car, because we let the bears run around. Now, it comes back to me.

Q. Were they live bears?

A. Yes, live teddy bears—Australian teddy bears.

Q. And they were running around the car?

A. Yes. We put them on those eucalyptus sticks. You have to get instances to make you think back like that. I can't do it otherwise. We had eucalyptus sticks in there, and we tied them to these tins, and the weight of the tins kept the sticks up.

Mr. Samuels: That is all immaterial, and we move to strike out about the teddy bears and the weight of the tins.

A. Well, it was a Jewett car.

Mr. Meyberg: Just a minute. Counsel is making a statement, and he is not asking you any question.

Mr. Samuels: I move to strike the witness' answer on the ground it is not responsive and not explanatory.

Mr. Meyberg: Just answer the question, Mr. Heiser.

A. I am sorry.

Mr. Samuels: Q. Have you any recollection of how long it took you to drive from San Francisco to Los Angeles, or did you drive through directly, or did you stop en route overnight?

A. I couldn't recollect, sir; I couldn't recollect that.

Q. Well, bearing in mind the fact that you were in Los Angeles at the United States National Bank when a certain shipment of industrial sapphires were delivered to that bank—

A. Yes, sir.

Q. Had you arrived at Los Angeles before the delivery of that shipment?

* * * * *

Mr. Samuels: Let us refer to it as a "shipment".

Mr. Meyberg: That is all right, if you refer to it as a shipment.

Mr. Samuels: Q. It was a shipment of mechanical industrial sapphires received at the bank, is that correct?

A. Yes, sir.

Q. Now, with respect to that shipment, and the time of receipt or delivery at the bank, had you arrived in Los Angeles before or after that time with your automobile containing any of the additional material set forth in paragraph VI of the complaint previously identified?

* * * * *

A. I couldn't say for sure, because I made several trips to Los Angeles before that, and several trips after that, and I couldn't tell you exactly; it would be impossible for me to tell you exactly whether it was before or after because there was so much movement at that period, and I couldn't identify one period from another with the stuff.

Q. Did you make more than one trip to Los Angeles with any portion of this additional material—referring to the material mentioned in paragraph VI of the complaint—and by "additional", eliminating the mechanical industrial rough sapphires?

A. I couldn't say right off, sir.

Q. What?

A. I couldn't say right off. It is difficult to remember those things under the circumstances that I was moving around under.

Q. Do you know whether or not one storage receipt was issued by the bank for all of the material enumerated in paragraph VI of said complaint?

Mr. Meyberg: What was that question?

(Pending question read.)

• • • • •

A. I couldn't recollect about the receipt, sir.

Mr. Samuels: You couldn't?

A. No, I couldn't.

Mr. Samuels: Well, we will have to go beyond that for the moment. We will return to the warehouse situation after we have examined these depositions a little more carefully, and we will see if we can refresh your recollection.

Q. I call your attention, Mr. Heiser, to page 244 of the transcript of the testimony given upon the revaluation proceeding before Judge Cosgrave in action No. 7,256-C-Law, and particularly to the following question and answer:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?

"A. The gem material referred to, yes, sir."

Do you recall that question and that answer?

A. I don't recall the question or the answer, sir.

Q. Do you recall in that connection upon that revaluation proceedings that a bill of lading was submitted to you, and that you were asked to identify your wife's signature there?

to, Mrs. Lillian Heiser, and that you identified her signature?

* * * * *

Mr. Samuels: Q. Do you recall that?

A. No, I don't recall it, sir.

Mr. Samuels: Well, I will read you the questions. Preliminarily I will ask you—there is no use putting this in the record.

Q. Your wife's name is Lillian Heiser, and you were married to her in August, 1928. To which you responded in both instances, "Yes."

Then you were asked a question on page 243:

"Q. You would, of course, recognize her signature, I take it?

"A. Yes, sir.

"Q. I will identify the signature. I will ask you if, at the bottom of this yellow sheet that I am now exhibiting to you, the signature, Mrs. Lillian Heiser, is the signature of your wife.

"A. I think it is, sir.

"Q. You know your wife's signature, don't you?

"A. Yes.

"Q. It is your judgment that is her signature?

"A. Yes; it looks like it, sir."

Do you remember that testimony?

A. I don't remember the testimony, sir, but it sounds as if it could be right. There was so much asked me in that trial, and this trial, that it is almost impossible for me to remember that kind of an incident; it is impossible for me to remember it anyhow.

Q. Do you recall this testimony:

"The Court: What is the nature of the document?

"Mr. Peterson: It is a storage receipt, isn't it?

"A. You didn't let me read it; you just showed me the signature.

"Mr. Peterson: It is a storage receipt, a bill of lading and storage receipt.

"The Court: Issued by a steamer?

"Mr. Peterson: It should show at the top.

"The Court: It appears to be received from C. A. Lobri,—"

That is spelled L-o-b-r-i.

"—to be forwarded, in whole or in part on the steamer Havre,—"

Evidently that means "Harvard."

"—or such other steamer, and so forth,—very well.

"Mr. Meyberg: I think it is a bill of lading, your Honor."

Do you recall that testimony, and those statements at that hearing?

A. No, I just can't recall them, sir.

Mr. Samuels: This must have been annexed to it. (Indicating document.)

Mr. Meyberg: I don't know what you are referring to, Mr. Samuels, and I don't know that the record does.

Mr. Samuels: Q. "Mr. Meyberg: It was a receipt also?

"Mr. Beveridge: Yes.

"Mr. Peterson: I want the bill of lading marked as the first exhibit.

"The Clerk: That will be Defendant's Exhibit E."

Do you remember that transpiring?

A. No, I can't remember it.

Mr. Meyberg: Just a moment.

Mr. Samuels: Q. Now, in light—

* * * * *

Mr. Meyberg: Very well. Proceed.

Mr. Samuels: Q. Now, listen to this, if you will, kindly, from page 245, Mr. Heiser:

"Mr. Peterson: For the purpose of the record—it may be something else, but for the purpose of the record, so that the court may be acquainted with what this shows, it shows 36 sacks of mechanical corundum of a weight of 4325 pounds. The person signing it appearing to be Mrs. Lillian Heiser.

and her statement as to the value of the shipment is $500.00, and the document also shows that the shipment was not insured. If you have anything else you want to call to the court's attention, I will let you do it."

Do you recall that statement by Mr. Peterson?

• • • • •

Mr. Samuels: Q. In light of—

Mr. Meyberg: Wait a minute. He didn't answer the question. You want an answer to the question, don't you?

Mr. Samuels: Will you answer the question?

A. May I have the question read?

(Pending question read.)

A. I can't recollect those things, Mr. Samuels.

Q. Well, do you recall now a yellow instrument having been presented to you on that hearing for identification of the signature of your wife?

• • • • •

A. I don't remember, sir.

Q. You don't recall at all?

A. There were so many instruments shown to me that I don't remember.

• • • • •

Q. Now, referring to the testimony I have brought to your attention, namely:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?"

And your answer: "A. The gem material referred to, yes, sir."

Referring to that question and answer, can you now state whether or not the gems were included as a portion of the mechanical industrial rough sapphires in the shipment in question?

• • • • •

Mr. Samuels: What is your answer, Mr. Heiser?

A. I would like the question read again.

Mr. Samuels: Certainly.

A. If you don't mind, sir, I would like to have it read again. It is awfully confusing to me.

Mr. Samuels: Any time you want a question re-read to you, it will be read to you without further statement from you.

(Pending question read.)

A. Included where?

Q. Included in the shipment in question.

A. What shipment?

Q. That is the shipment of 4325 pounds.

A. Included where and when?

Q. There was one shipment made only, and it was being discussed, Mr. Heiser, and that is a shipment which was evidenced by an instrument shown to you.

A. When would it be included?

Q. That was a portion of the shipment made at the time.

A. At the time of shipment from where?

Q. From San Francisco on August 9th, 1928, to Los Angeles, aboard the Steamer "Harvard."

Mr. Meyberg: Mr. Samuels read you a question and answer, Mr. Heiser, and if the reporter will re-read it to you again maybe you will follow it. He is referring back to that question and answer. Is that correct, Mr. Samuels?

* * * * *

A. If this gentleman will re-read the question, I may be able to answer it.

(Pending question read as follows:

"Q. Now, referring to the testimony I have brought to your attention, namely:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?'

"And your answer: 'A. The gem material referred to, yes, sir.'")—

A. Yes, that is true.

* * * * *

Q. I am asking you now whether in light of that question and your answer, can you state whether or not this shipment on th Steamer "Harvard" on August 9th, 1928, of 36 sacks o mechanical corundum, 4225 pounds, included the material of 1200 ounces blue sapphires rough, 1,000 ounces star sapphires rough, 1200 ounces opals black and light, rough, 1,000 ounces zircons rough, 1 piece jade 28 pounds, or any portion of that additional material I have just read to you at length.

A. Well, I believe it was all—it is hazy to me, about which was which, and what was what in that parcel, but I believe it was all included in the vault, and it came up there, but I don't remember exactly how it was shipped.

Q. I asked you if in that shipment any of the different items I have just read to you from your complaint were included?

A. Any of the different items?

Q. Yes, that I just read to you—the 1200 ounces blue sapphires rough—. I will take them separately.

A. Yes.

Q. Were they or any portion of them included in that shipment?

A. I think they were, but I am not positive of quantities or amounts.

Q. The shipment I am referring to is the shipment on the Steamer "Harvard"—do you understand that?

A. Yes, sir.

Q. All right. I do not want to confuse you at all.

A. You see, I am a little hazy.

Q. Give me your best judgment. The 1200 ounces blue sapphires rough, were they any portion of the shipment?

A. Yes, it is just possible that they could all or a part of them have been. It is hazy to me at present, but the whole lot could have been shipped with those bags, and yet some part might have been taken in a motor car, as I said previously.

Q. What is your best recollection as to which method was employed in the shipment or transportation of the material?

A. Oh, I couldn't say. As I said before, it is awfully hazy to me, Mr. Samuels.

Q. Then you have no definite recollection on the subject at all?

A. I have a recollection of the stuff coming there, as I said before, but the direct shipment of it I couldn't tell you exactly, no, sir.

* * * * * *

(Thereupon an adjournment was taken until Thursday, August 28th, 1941, at 10:00 o'clock A. M., and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Thursday, August 28th, 1941, 10:00 A. M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: What subject were we last on, Mr. Reporter?

Mr. Meyberg: The reporter might read the last question and answer.

(Record read as requested.)

A. Well, now, Mr. Samuels—

Mr. Samuels: Go ahead, sir.

A. I have a definite recollection on that matter. It was all shipped in that shipment. I am definitely positive of that, now.

Q. All right. Now, you were in error when you stated that you believed that a portion of the shipment—and I refer by a portion to the material outside of the mechanical industrial rough sapphires—was transported by you in an automobile?

A. What was transported by me in the automobile was cut gems, opals, sapphires, zircons, and some crystals—rock crystals; they were in tins.

Mr. Samuels: I am still in doubt. I am sorry to repeat this question, but you want it clear, and so do I.

A. I am sorry.

Mr. Samuels: Apparently this will be repetition, but I will ask you again—

Mr. Meyberg: You go right ahead. It is apparently confusing to both of you the way the record stands now.

Mr. Samuels: Yes.

Q. When you say they were all included in one shipment, do you mean simply the mechanical industrial rough sapphires?

A. No, I mean the 1200 ounces of blue sapphires, and the 1,000 ounces of star sapphires, the 1,000 ounces rough zircons, and the 1200 ounces of opals, black and light, rough, and the piece of jade.

* * * * *

Q. Calling your attention to the transcript of the testimony in case No. 7,256-C-Law, previously identified, and particularly page 263 thereof, I would ask you whether you recall these questions and answers, commencing on line 4:

"Q. Did you have any insurance on that property at the time that it was being shipped on the steamer?

"A. I think I had an insurance, sir, at that time.

"Q. I must know what the fact is.

"A. I think we carried insurance on it, sir, a truck policy in Lloyd's. I carried a policy in those days, a Lloyd's policy; protection against all merchandise, from London."

Do you recall that testimony?

* * * * *

(Recess; pending question read.)

A. It is not very clear to me, sir.

Q. All right. Did you carry insurance upon that merchandise which was shipped on that steamer?

A. I am not positive. We had a block policy.

Q. Who are "we"?

A. Myself. I carried a block policy myself.

Q. What is a block policy?

A. A block policy means that it covers it in transit. They call it "block" in Australia. That is the wrong word there, you see, but I suppose that was just a clerical error.

Mr. Samuels: That was an error, and you are correcting that properly.

A. Yes.

Q. "Q. You say you think you had a policy?

"A. My brother-in-law generally kept those up for me, but that is an Australian policy."

A. That is "Australian brother-in-law."

Q. Who is your Australian brother-in-law?

A. Bill Ives.

Q. Then that was not handled by Mr. Lobree, your brother-in-law?

A. No, sir.

Q. He had nothing to do with that at all?

A. No, sir, he had nothing to do with that at all.

Q. And that is your best recollection?

A. Yes, that is my best recollection.

Q. Do you know the amount of the policy?

A. No, not offhand, sir; I couldn't tell you; I couldn't recollect it now.

Q. Have you a copy of the policy?

A. No, I haven't, sir.

Q. Have you maintained the policy in effect since?

A. No, it lapsed I think when I got to London. It was just a twelve months' policy or a six months' policy. It was merchandise covered in transit.

Q. And you haven't covered your merchandise since?

A. No, I haven't covered it, sir.

Q. With respect to this material which was stored in San Francisco—and I am going to refer particularly to the mechanical industrial rough sapphires—that had its greatest value, did it not, during the war period?

A. Well, it is generally during war period, but sometimes when industrial booms take place, sir, it becomes valuable.

Q. But the likelihood of sale in substantial quantities was greater, was it not, during a war period than during normal times?

A. Well, during war period or just before it, yes, sir.

Q. You did not endeavor to sell any of this material—I am talking now about the mechanical industrial rough sapphires—between 1915 and 1928?

A. I was shipping my material that we had sales for from Australia. We were shipping from Australia, sir.

Q. And you allowed the stock to remain—by the stock I am referring to the stock in San Francisco—to remain intact, is that right?

A. Yes, sir.

Q. Was the market for that stock more favorable in the United States or abroad?

A. Generally abroad, sir, because the labor was cheaper in Germany, Switzerland, Belgium and Holland, and the apprentices work with the artists, and they learn to make the jewels, and they are shipped back finished to this country.

Q. And that applied both to war periods and normal periods?

A. Yes, very forcibly to war periods. For instance, America today is very, very short of finished products of that particular kind; it is rather a serious shortage at the present time.

Q. Wasn't the cost of cutting this rough material—I am referring again, until I change the designation of it, to the mechanical industrial rough sapphires—

A. Yes, sir.

Q. (Continuing:) —greater in the United States than it was abroad?

A. Was the demand greater?

Q. No, the cost of cutting it?

A. Oh, yes.

Q. And is it not a fact that the cost during the period of time, we will say, while you held this material in San Francisco, was almost prohibitive—the cost of cutting?

A. Yes, sir; that is why it wasn't cut.

Q. And that is why the market for it was also very restricted, is that not true?

A. Yes, sir, the market was restricted to the rough material.

Q. That is what I am talking about.

A. Yes, sir.

Q. I am limiting myself to the rough material.

A. Yes, sir.

Q. Therefore, it would have been very difficult, would it not, to have marketed this rough material of mechanical industrial rough sapphires during the year 1928 at a dollar an ounce?

A. No, we were selling quite a lot of sapphires of that class to Germany and Switzerland for a little over a dollar—five and six pence, I think we were getting.

Q. I am speaking of in the United States. My question should have included in the United States.

A. Well, maybe around that time—

Q. No. Can't you answer that first without your explanation?

A. Well, pardon me.

Q. Then you can give your explanation. That is the preferable way, I think.

A. No.

Q. What explanation do you want to give, or is your answer "No"?

A. My answer is no, it was not difficult.

Q. It would not have been difficult?

A. No. We could have sold to a group in New York all of that stuff, but they wanted to give us notes, and I couldn't afford to take notes at that time, and they offered us a little cash. I think it was the Precious Stone Corporation—I can't recollect exactly or clearly the name.

Q. When you say "we could have", you mean you had received an offer for a certain quantity of mechanical industrial rough sapphires—

A. Yes, sir.

Q. (Continuing:) —in the year 1928?

A. In 1928, yes, sir.

Q. In the year 1928 from a group in New York?

A. Yes, in 1928. I think it was—I can give you almost the month—the month I can give you too—it was in September, 1928. It was a few days before I sailed for England. That is why I know so clearly.

Q. Who constituted the group?

A. The Precious Stone Corporation they call themselves.

Q. Was it a corporation, or were they individuals?

A. That I didn't know, sir.

Q. Whom did you deal with?

A. I met a man—I think his name was—I am not positive, but I think his name was Stone. He was the president.

Q. That was an appropriate name.

A. I think he belonged to one of the big institutions in Philadelphia.

Q. You say you think. Do you know?

A. He claimed he did, but I hadn't met him there.

Mr. Samuels: I move to strike that out—he claimed to belong to one of the big institutions.

Q. Have you his first name?
A. No, I have forgotten it now, sir.
Q. Do you know where he lives now?
A. No, sir.
Q. Is he engaged in the jewelry business or gem business?
A. That I couldn't say.
Q. Was he at that time?
A. Oh, yes, he was at that time.
Q. Where?
A. In New York City.
Q. Where in New York City?
A. I am not positive—I am not sure. They had a factory in Brooklyn or New Jersey. It was right near the city, because I went by "sub" to it.
Q. Was he doing business under the name of—what was the name of that company again?
A. It was Precious Stone or Precious Gem. I couldn't recollect it for sure, now. You know, it is hard to remember those names exactly, sir.
Q. Did he communicate with you by writing?
A. No. I got his name out West here, and I went to New York and saw him, and I was with him on and off several days.
Q. Don't you recollect whether it was in New York City or Brooklyn?
A. I met him in New York—in the City of New York, and he was in one of the districts—I couldn't recollect which district it was, sir; no, I couldn't remember that.
Q. And did you meet anybody else at that time—you referred to the Big Four—associated with him?

Mr. Meyberg: What was the reference to the Big Four?

Mr. Samuels: Not the Big Four, but the Four.

A. I didn't say anything about Four, sir.
Q. Did you meet anybody else of the group?
A. Oh, I met his—
Q. Did you meet anybody else of the group?
A. With that gentleman I must have met—
Q. "I must have." Do you recall?

A. I recall sitting around a table with quite a few important gentlemen there.

Mr. Samuels: I move to strike out the word "important" as being the conclusion of the witness.

A. Well, I met several gentlemen with this particular man, but I couldn't recollect their names.

Q. And what quantity was under discussion which they were prepared to purchase?

A. They were talking of my output.

Q. Of what?

A. Of my output—all that I could produce.

Q. All you could produce. And they were willing to give you a note?

A. No, they wanted to give me some cash and a paper. And I went to the bank with somebody—I don't know who it was—and they wanted to give me part cash and part paper. Now, I am just trying to think—it may be strange, sir—this sounds strange, sir, but I think I met that gentleman through your brother.

Q. Where?

A. In this office—in the office he had then. It was a long time ago.

Q. The office he had here in San Francisco?

A. Yes. Before he died I met him. I came in from Australia in connection with a very important matter on gems.

Mr. Samuels: One moment. I move to strike out "I came in from Australia in connection with a very important matter", on the ground it is a conclusion of the witness.

A. Pardon me. Mr. Lobree introduced me to your brother, and I think your brother gave me some names in New York—a letter to some one in New York.

Q. A letter to some one in New York?

A. Yes. That is the best of my recollection. Mr. E. A. Lobree, my brother-in-law, brought me down to your brother.

Q. What year was this?

A. Oh, I couldn't remember the year, sir; I couldn't remember the time.

Q. How long preceding?

A. It was before 1928. And I met this man—

Q. One moment. How long preceding?

A. Oh, I couldn't tell you.

Q. Was it one, two, three, four or five years?

A. I couldn't say, because I was going backwards and forwards from Australia. I have just got a recollection that your brother gave me a letter to that man, and I met this man through your brother.

Q. You mean you met him through that letter?

A. Your brother gave me a letter to a gentleman in New York, or some one in New York, and through the some one in New York I met this Mr. Stone. Now, you might have it in your files showing the man whom I met, and you could find that man Stone easier than I could.

Mr. Samuels: It would take about five years to go through everything in the office from what you tell me, and I am not going to undertake that task. Don't put that in the record—all right; let it go in.

Q. Now, he was prepared to deliver to you at that time notes in a certain amount and cash, is that correct? When I say "he", I mean this Mr. Stone.

A. They offered to buy from me, yes.

Q. They were prepared then and there to deliver notes to you and allow a certain amount of cash?

A. Yes.

Q. What was the amount of notes they were prepared to deliver to you?

A. I couldn't recollect now.

Q. You have no idea at all?

A. No, I couldn't tell you the amount discussed at that time.

Q. Could you tell me the amount of cash?

A. No.

Q. Have you any idea how much it was?

A. It is all hazy to me.

Q. Haven't you any idea of the amount of cash?

A. No, I couldn't recollect now.

Q. Would it be $1,000.00, would you say?

A. I would only be guessing.

Q. Well, I want to know. According to your best belief it could have been less or more, is that right?

A. I couldn't say.

Q. What price was offered you?

A. I can't recollect exactly, but I think it was around the same prices that we were selling to Europe for. It was ranging according to the best of my recollection from 90c to about $1.36 per ounce.

Q. And that was for your entire output, is that correct?

A. That was for the output of industrial sapphires.

Q. That is what I am referring to.

A. We are only discussing that at this time.

Q. And for any specific time?

A. I couldn't recollect now.

Q. You couldn't recollect?

A. It must have been, because they wouldn't have discussed it for a month or six weeks, you know.

Q. It would have been for an attractive period, is that right?

A. Yes.

Q. A long period of years?

A. It would have been.

Q. It would have been years and not months?

A. Yes, it would have been years and not months.

Q. You said that was in September, 1928, if I remember correctly, on your trip to New York?

A. Yes, sir, it was on that trip.

Q. You knew Mr. Calvin Smith, did you not, of Los Angeles, or Mr. Walter Calvin Smith?

A. Yes, sir.

Q. Did you communicate that to him?

A. Well, Mr. Smith came to New York with me on that trip, but he only stayed I think two days, and I was there two or three weeks.

Q. Was he present at this meeting with any of these gentlemen?

A. I don't think so, because we arrived one day, and I think he left the next.

Q. And you knew Mr. Jefferson Graves, did you not, at that time?

A. Yes, sir.

Q. As a matter of fact you had arranged then to meet Mr. Jefferson Graves abroad—in London or Paris?

A. Paris, I think it was, sir.

Q. Paris?

A. I am not sure, sir. It is hazy to me.

Q. We will say in Europe.

A. In Europe.

Q. Did you mention that to him?

A. I don't think I saw him in New York.

Q. Did you mention it to him afterwards when you saw him in Europe?

A. I couldn't recollect.

Q. You saw him in the following month in October in Europe, did you not?

A. Somewhere about that time.

Q. Did you mention that to him?

A. Well, I couldn't recollect now if I did, or not, sir. You know, that was a long time ago, and it is impossible for a man to recollect what he said to a man at that time, or it is for me.

Q. Aside from this man by the name of Stone—and you can't identify him any more accurately, can you?

A. No, sir.

Q. (Continuing:) —Did you have any other opportunity at or about this time to dispose of any quantity of the mechanical industrial rough sapphires?

A. Yes, I sold industrial sapphires in Germany.

Q. I am talking about the United States. Pardon me. I should have said that.

A. Well, I wasn't in the country.

Q. Well, then, you can answer and give your explanation.

A. I wasn't in the country. I wasn't trying to sell industrial sapphires in the United States. I didn't want to sell in the United States industrial sapphires.

Q. Your best field for industrial sapphires as you have stated then was the European market?

A. That is where they cut them.

Q. Is it not a fact that in New York your efforts at or about this time or shortly prior to it—when I say at or about this time, I am talking about 1928, or shortly prior to that time—to dispose of mechanical industrial rough sapphires to possible outlets in New York, or possible purchasers thereof in New York, came to naught because of the expense of cutting them in New York or domestically—I refer to the United States—and the fact that they could be cut so much cheaper in Switzerland or abroad?

A. Well, I wouldn't say that was exactly a fact, sir. There were lots of features or lots of things entering into that industry. The chief thing was the men who knew how to cut these gems, and they wouldn't allow apprentices to come and cut them with them at a reduced price of wages, and they were reluctant to teach American boys how to cut, and the majority of the cutters were foreigners, and they didn't want to teach the Americans how to cut, and that was the chief thing. There were many industrial houses that would have liked to have cut their own jewels in this country, and to have been independent of foreign help in 1928. There was a lot of foreign help here, but they couldn't get the experts to train the American boys how to do it.

Q. That was shortly before 1928 as well as shortly thereafter?

A. It is true right up to date, sir.

Q. I see.

A. Right now, for instance.

Q. I said the period before then, too?

A. Yes.

Q. And therefore the field in the United States for the sale of this type of material was highly restricted, isn't that correct?

A. Restricted to the channels which were cutting, yes, sir.

Q. Now, coming to the period in 1928 when you met Mr. Walter Calvin Smith, and the bankrupt, Mr. Leonard Woodruff, an agreement was entered into, or an arrangement was entered into between at least the three of you, was there not, for the formation of a corporation to be known as and which was named the Golden State Gem Company of Nevada?

A. That is all very hazy to me, sir, because it all happened within a couple or three weeks, and I left for Europe immediately.

Q. Well, certainly you recollect that a corporation by the name of Golden State Gem Company of Nevada was formed at that time?

A. That is right.

Q. Or immediately preceding, is that correct?

A. Yes, sir.

Q. You remember it was a Nevada corporation, do you not?

A. I think it was, but I can't remember exactly now, sir.

Q. And you recall, do you not, that certain stock of the Golden State Gem Company of Nevada—I refer to the common stock—was issued in your name, is that correct?

A. Well, I couldn't tell you for sure, sir. I signed my signature to a couple of pieces of paper, and they took copies of it, and they stamped it on the different shares, and stock was issued.

* * * * *

(Pending question read.)

Mr. Meyberg: You either recall it, or you don't?

A. I don't recall anything connected with it, sir.

Mr. Samuels: Q. I will show you what purport to be five certificates of the common stock of a corporation designated in such certificates as Golden State Gem Company of Nevada, the certificates being numbered 10 to 14 consecutively, each dated the 24th day of August, 1928, Nos. 10, 11, 13 and 14 for 1,000 shares of stock, and No. 12 for 3,000 shares of stock, with the name "Morrie Heiser" typed in the space for designation of the owner, with the name of Walter Calvin Smith in handwriting above the line for designation of president, and the name "Morris Heiser" in handwriting above the line, or on the line above the designation of secretary, and ask you to examine each certificate and tell me whether the signature "Morrie Heiser" on each is your signature?

You can see these, Mr. Meyberg.

(Certificates handed to Mr. Meyberg and thereafter to the witness.)

A. I am not sure, sir; yet it looks like it. I have no recollection of signing them.

Q. You have no recollection of signing them?

A. No, sir.

Q. I call your attention to the form of assignment on the back of each certificate where the space for the name of the assignee has been filled in in longhand with the name "Maudie James Loller" in each instance; in longhand the date in each instance in the space therefor has been inserted, August 25,

1928, in the line for the purported owner of the stock appearing on the reverse side in longhand in each instance is "Morrie Heiser," and in two instances, that of No. 14 and that of No. 12, appears in longhand on the blank line below the printed words "In presence of" the name "Mrs. Lillian Heiser." Will you examine the reverse side of each of these certificates, and tell me whether the writing "Morrie Heiser" is your signature, or not?

A. It looks like it sir, but I don't remember signing it.

Mr. Samuels: I didn't ask you that.

A. I beg your pardon.

Q. Is it your signature according to the best of your knowledge?

A. It looks like it.

Q. Can't you answer "Yes" or "No"?

A. No, I can't. It looks like my signature.

Q. You will not then identify it as your signature with certainty, is that right?

A. Yes, that is right, sir.

Mr. Samuels: Q. Now, referring to the purported signature of your wife: On the reverse side of the two certificates previously identified can you state whether or not in those two instances the signature is that of your wife?

(Certificates handed to the witness.)

A. No, I couldn't say for sure, sir.

Q. You will not identify her signature either?

A. No, sir.

Q. And you have no recollection of the five certificates of stock being in your possession at any time, is that correct?

A. I can't recollect now, sir. That was quite a few years ago.

Q. Have you any belief on the subject?

A. Not now. It has been quite a long time ago, and I have tried to forget all about those things. I have had other things to worry about in the last few years, and naturally I haven't thought of those kind of things for some time, and I have no recollection in connection with it.

Mr. Samuels: I am offering in evidence as "Objector's Exhibit No. 6," as one exhibit, the five certificates just presented to the witness.

Mr. Meyberg: Our regular objection goes to all these questions, and upon the additional ground that no foundation has been laid.

Mr. Samuels: When you say your regular objection, you mean your objection stipulated to, and going to all these questions?

Mr. Meyberg: Yes.

(Five certificates of Golden State Gem Company to Morris Heiser, Nos. 10 to 14, marked "Objector's Exhibit No. 6.")

Mr. Samuels: Q. You do not recall, then, finally delivering any one of the five certificates just brought to your attention to Mrs. Loller, or to her then husband, William Loller? Was that his name?

A. No, I can't recollect now, sir.

Q. Do you recall that certificates of stock of the corporation, Golden State Gem Company of Nevada, issued in your name in excess of the certificates brought to your attention were at any time delivered to you?

A. Not to my recollection, sir.

Q. Do you recall that you were at a meeting of directors of Golden State Gem Company of Nevada and were elected to the office of secretary?

A. I don't recollect that, sir.

Q. Do you recall any meeting of the directors or incorporators of this Nevada corporation?

A. No, sir.

Q. You don't recall any of them?

A. No.

Q. It is a fact, is it not, that the shipment of material from San Francisco to Los Angeles, which shipment has been the subject of testimony by you just above in this deposition, was lodged or stored in the United States National Bank of Los Angeles some time about August 13, 1928?

A. Yes, sir, to the best of my belief that is correct.

Q. Do you know in whose name it was stored?

A. No, sir, I couldn't remember now.

Q. Was it stored in the name of the Golden State Gem Company, a California corporation?

A. No, it would not have been.

Q. It wasn't?

A. I am pretty sure of that.

Q. Was it stored in the name of the Golden State Gem Company of Nevada?

A. No, it wouldn't have been.

Q. When I say "stored," I mean in conjunction with your name. I do not mean alone. I am going to modify those previous questions. Was it stored jointly with you and with either one of those companies I have mentioned?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. Was it stored in your name and in the name of Walter Calvin Smith?

A. Not to my knowledge.

Q. Well, the instructions with respect to the storage were given by you, were they not?

A. It is very hard to remember so far back, sir; I couldn't recollect.

Q. Do you remember anybody else who gave the instructions at that time?

A. No, I couldn't remember, sir. I wish I could.

Q. Were you present at the storing of the material in that bank at or about the time mentioned?

A. Yes, I was there at the time it was brought in, I am sure.

Q. Well, did you receive a storage receipt at that time?

A. Well, I had other goods there besides that, sir.

Q. Pardon me. Did you receive a storage receipt for that shipment at that time?

A. I might have, but I can't recollect now, sir.

Q. Did you not give the bank the name or names in which it should be stored?

A. I must have done so, but I can't recollect; I can't recollect having done so. That is going back a long way, sir.

Q. Do you recall my showing you these five certificates of stock when your deposition was taken in the case of Heiser vs. Graves, and taken at my office—I will give you the appropriate date so that you will know it—on the 27th day of October, 1932?

A. No, I can't remember that, sir. You showed me so many papers, and there was so much at that time, that I can't remember it.

Q. You can't remember. That is the answer.

A. No, sir, I can't remember.

Q. You have no recollection at all?

A. No, sir.

Q. Do you not recall at that time you identified the signatures on the five certificates mentioned above the word "Secretary" as your signature?

A. No, I don't recall it, sir.

Q. I am going to read you some questions and answers from the deposition I have last referred to, and so that you can follow it—they will be quite lengthy—I am going to allow you, if you will, or your client, to take this deposition, commencing on line 2, at page 131.

Will you follow me, Mr. Meyberg?

(Transcript handed to Mr. Meyberg.)

"Q. Look at this certificate of stock if you will kindly. You will see that it bears the witness mark on the back of that stock and immediately below the assignment clause, of your wife, is that correct?

"A. Yes, sir.

"Q. Is that her writing?

"A. I think so; I am nearly sure."

In the light of that testimony what will you say with respect to the signature of your wife on the certificate I have shown you?

A. Well, I am not sure now, sir.

Q. You are not sure now?

A. No.

Q. "Q. And further viewing the certificate, immediately below the assignment clause, that is your signature, is that correct?

"A. Yes, sir."

In the light of that testimony can you identify your signature?

A. No, I can't now, sir. It might have looked like it then, but today those "r's" don't look like my signature.

Q. "Q. And inserted in blank spaces are the words: 'I' and 'Maude James Loller;' is that correct?

"A. Yes, sir.

"Q. In whose handwriting are those words?

"A. I think that is mine."

Do you recall so testifying?

A. Yes, I might have thought it was my signature.

Q. Do you recall so testifying?

A. No, I don't recall it, sir.

Q. What is your belief now as to the insertion of the writing of the words "I" and "Maude James Loller," is that your handwriting?

(Witness examining certificates.)

A. I am not sure, sir.

Q. What is your best judgment in that regard?

A. I haven't a recollection on that.

Q. All right.

A. My judgment would be that the "J" doesn't look like my "J." I don't think I write a "J" like that.

Q. You do not think this is your signature?

A. I am not sure.

Q. You say you don't think you write like this?

A. I am not sure.

Q. "Q. You will also notice handwriting, '25 August 1928" on the date line; whose handwriting is that?

"A. I think that is mine also, sir."

Do you remember so testifying?

A. No, sir.

Mr. Meyberg: Where did you read that from?

Mr. Samuels: That is on page 131: "You will also notice

handwriting, '25 August 1928' on the date line; whose handwriting is that?'' That is lines 15 and 16 on page 131.

Mr. Meyberg: Oh, yes, that is right.

Mr. Samuels: Have I read it correctly?

"A. I think that is mine also, sir."

Mr. Meyberg: Yes.

Mr. Samuels: Q. What is your belief now as to whether or not the handwriting "25 August 1928" is yours?

A. I don't know that it is mine, sir.
Q. You don't know that it is?
A. No.
Q. Line 20: "Q. Were those insertions in the blank spaces which you have just referred to, 'I,' 'Maude James Loller' and the date '25 August 1928' made on the date appearing in the date line, '25 August 28'?

"A. I don't think so, sir, because a lot of those papers were prepared in Los Angeles while I was here, and they sent them down here for me to sign them, or from Los Angeles to San Francisco, and I am not positive of that."

Do you recall so testifying?

A. I don't recall so testifying, sir.
Q. Now, we are coming to line 1, on page 132:

"Q. Did you endorse any other certificates of this corporation at the same time in the same manner?
"A. Yes, sir."

Do you recall so testifying?

A. No, I don't recollect, sir.
Q. Is it a fact that you endorsed any other certificates?
A. I am not sure. I don't know what I did in 1928. I couldn't recollect.
Q. "Q. How many more?

"A. There were several others; I don't know exactly how many."

Do you remember so testifying?

A. No, I don't remember, sir.
Q. "Q. What is your best recollection?

"A. I remember giving them to Mr. Loller."

Do you recall so testifying?

A. No, I don't, sir.
Q. Did you give any of these certificates to Mr. Loller?
A. That I don't recollect.
Q. What?
A. I don't recollect now.
Q. "Q. When did you give them to Mr. Loller?

"A. I think it was the early part of September, I am not positive."

Do you remember that question and answer?

A. No, I don't, sir.
Q. Do you remember now whether or not you gave any certificates to Mr. Loller in the early part of September?
A. No, I am not positive.
Q. "Q. The early part of September?

"A. Yes, it was just before I left for Europe."

Does that refresh your recollection?

A. No, sir.
Q. Will you say whether or not you gave any certificates of this corporation to Mr. Loller?
A. I couldn't recollect.
Q. You can't answer "Yes" or "No"?
A. No, sir.
Q. "Q. It is a fact, is it not, that you gave him 5000 shares in five separate certificates?

"A. I couldn't tell you exactly how many."

You do not recall that?

A. No, sir, I can't remember that, there were so many questions asked me.
Q. "Q. What is your best recollection?

"A. I couldn't tell you how many I gave him offhand."

You don't recall that testimony?

A. No, sir.

* * * * * *

Mr. Samuels: Q. Calling your attention then to page 133, line 12:

"Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?"

The shares of stock constituted the certificates Nos. 10, 11, 12, 13 and 14—is that correct?

Mr. Meyberg: You say here "several." I don't know whether it makes any difference.

Mr. Samuels: Q. "Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?"

Referring to certificates 10 to 14, inclusive, presented to you; those are the certificates referred to in the question. And the answer is:

"A. To Mr. Loller."

Do you so recall?

A. No, I don't recall it now, sir.

Mr. Samuels: Let us go to question—

Mr. Meyberg: You can put in: "Was anybody present when you delivered them?"

Mr. Samuels: I will put the whole thing in. It makes no difference.

Q. "Q. Do you remember where you delivered them to him?

"A. I think it was in his office: I am not positive: I am nearly sure it was in his office on Market Street."

Do you remember so testifying?

A. No, I can't now, sir.

Q. And have you any recollection now of delivering any of these certificates to Mr. Loller at the place designated at his office on Market Street, or anywhere else?

A. That was so long ago.

Mr. Samuels: You can answer the question.

A. No, I don't recollect. I am sorry, sir.

Q. "Q. Was anybody present when you delivered them?

"A. No, I don't think there was."

Do you recall that testimony?

A. No, I don't, sir.

Q. "Q. What is your best recollection of the date of delivery?

"A. I think it was about the first of September, sir, the early part of September, I think."

Do you recall that?

A. No, I do not.

Q. Does that refresh your recollection in any way?

A. No, sir.

Q. "Q. Why did you insert the 25th day of August, 1928?

"A. Because they told me to do that immediately when I received them, and I think after they were issued in Los Angeles they were sent here and I got them next day."

And in longhand: "I received the shares several days prior to delivery."

Do you recall that testimony?

A. No, sir.

Q. Was it a fact that you received these shares?

A. I couldn't tell you, sir; I can't remember.

Q. "Q. Who were 'they'?

"A. I think it was Mr. Smith; I am not sure."

Do you recall that?

A. No, I do not.

Q. "Q. By letter?

"A. I think he telephoned to me to do it, because they did a lot of business by telephoning to me."

Do you recall that?

A. No, I don't recall it.

Q. "Q. These were executed in the presence of your wife; these two bear her signature?

"A. Yes, sir."

Do you recall that?

A. No, I don't, sir.

Q. Was it a fact that they were executed in the presence of your wife?

A. I have no recollection of it at all, sir.

Q. "Q. Were they transferred in the presence of your wife? Was the transfer clause filled out in the presence of your wife?

"A. Yes."

Do you recall that?

A. No, sir.

Q. You don't recall the testimony or the fact?

A. I don't recall anything about it at present, sir.

Q. Is it not a fact, Mr. Heiser, that this shipment of your material which was lodged or stored in the United States National Bank of Los Angeles was transferred by you to Golden State Gem Company of Nevada in consideration of the issuance of the shares of stock which has been the subject of your recent testimony and certain additional shares of stock in that corporation?

A. No, sir.

* * * * *

Q. I am going to refer you to page 15 of your testimony in the matter of Golden State Gem Company, bankrupt, in the District Court of the United States, Southern District of California, Central Division, before Honorable Earl E. Moss, Referee, and particularly the following questions and answers—I will start with the last question on page 15:

"The Referee: Now, did you have any written transactions—"

Mr. Meyberg: May the record show that the Referee to which you refer in this transcript is Earl E. Moss?

Mr. Samuels: Yes.

* * * * *

Q. "The Referee: Now, did you have any written transactions with Mr. Smith or Mr. Woodruff, in writing?"

This is on page 16:

"A. I couldn't say how many documents there were prepared I signed, but Mr. Smith kept one set and Mr. Barstow or Mr. Woodruff got the other. I didn't take them because I was on my way to Europe. I left for Europe just after that and I didn't know what happened until I got there and I was making an arrangement for the getting of the rough material for the Golden State Gem Company."

Do you recall that question and answer?

A. No, sir.

Q. Was your answer correct?

A. I haven't any recollection, sir, today.

Q. "Q. You signed a number of papers but you do not have copies of them?

"A. No. Mr. Smith was looking after that end, and Mr. Barstow had the rest on file."

Do you recall that question and answer?

A. No, I don't sir.

Q. With respect to your answer, have you any recollection of the facts, or not?

A. That is all so hazy to me; sir.

Q. Then you have no recollection, is that correct?

A. I have no recollection.

Q. "Q. Well, when you brought those stones up here you put them over in the United States National Bank. Was the box under joint control or individual control of any of you three gentlemen?

"A. Each *ones* had access to it, and it was in the name of the Golden State Gem Company."

Do you recall that?

A. No, sir.

Q. You don't recall that?

A. No.

Q. Is it a fact that the box referred to—whatever it may have been—was in the name of the Golden State Gem Company at that time?

A. Not to my recollection.

Q. Was it a fact that anybody else besides yourself had access to that stored material?

A. Not to my recollection.

Q. "Q. And it was individually controlled for yourself, Woodruff or Smith?

"A. Yes. They were supposed to be my property until they were turned over to the Nevada Company. The only thing I was to receive for my stock of gems was shares in the Nevada Company but there was nothing ever passed to the Nevada Company, your Worship. They kept everything to themselves and they gave me paper in a worthless company that never functioned."

Do you recall that testimony?

A. No, sir.

Q. You do not recall that?

A. No, sir.

Q. Is it a fact, then, that the only thing you would receive for your stock of gems were shares in the Nevada Company?

A. I don't recollect that, sir.

Q. You don't recollect that?

A. No, sir.

Q. Was it your ground of complaint that while you received the shares of stock they were valueless because what you understood the company was to do was not done?

Mr. Meyberg: Just a minute. That is objected to on the further ground that the complaint is the best evidence.

Mr. Samuels: Answer the question.

A. I have no recollection on that at all, sir.

Q. You have no recollection at all on that?

A. No, sir.

Q. Now, I show you what purports to be a photostatic copy of a check drawn against the United States National Bank, dated September 21, 1928, No. 23, payable to the order of M. E. Heiser or Morrie Heiser, in the sum of $350.00, signed, "Golden State Gem Co. of Nev. Walter Calvin Smith," opposite the word "President"; "Morrie Heiser" opposite the word "Secretary", and ask you if you have ever seen the original of that check?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. I am trying to identify this, but it is very difficult. On September the 21st, 1928, I think I was on board a ship, sir, on my way to London. I left here on the 5th day of September, and I was in New York about two weeks. I am not sure. It is very, very hazy. It is hard for me to say; it is impossible.

Q. Is that a facsimile of your signature appearing there, "Morrie Heiser"?

A. I am not sure. There is the name of "Heiser" written on top, and there is the name of "Heiser" written again underneath.

Q. Surely you know your signature, Mr. Heiser, do you not?

A. I am not sure whether that is my signature, or not.

Q. Can't you say whether that appears to be a true photostatic copy of your signature, or a photostatic copy of your actual signature?

A. The only thing I can identify is this: I have a hazy recollection that Smith was in New York with me and short of money, and he asked me—

Mr. Samuels: I didn't ask you anything about that. I asked you to identify your signature if you can.

A. I can't identify it in any other way. That is the only way I can identify it; that is the only way. I am sorry.

Q. And referring to the reverse side, and apparently there purports to be a photostatic copy of your signature "Morrie Heiser," and below that "E. A. Lobree." Will you look at those signatures. Can you identify that as your signature, "Morrie Heiser"?

A. It looks like mine, but I am not positive, sir.

Q. Do you know your brother-in-law's signature?

A. I haven't seen it very much for a long time.

Q. Can you identify that as his signature?

A. I wouldn't identify his signature, no, sir; I wouldn't like to identify it.

Mr. Samuels: We will offer this photostatic copy of

check just presented to the witness, and ask that it be marked as Objector's exhibit next in order.

Mr. Meyberg: To which our same objection goes.

Mr. Samuels: Yes.

Mr. Meyberg: And no foundation laid, and not the best evidence.

(Check No. 33, dated Sept. 21, 1928, to M. E. Heiser from Golden State Gem Co., marked "Objector's Exhibit No. 7.")

Mr. Samuels: Q. Did you not introduce Mr. Walter Calvin Smith to the United States National Bank of Los Angeles?

A. Not to my recollection.

Q. Not to your recollection. What is your best belief on the subject, if you have any?

Mr. Meyberg: What was the question?

(Record read.)

A. No, I haven't any recollection on that at all.

Mr. Samuels: Q. Were you a customer of the United States National Bank—

Mr. Meyberg: When?

Mr. Samuels: I am going to ask him.

Mr. Meyberg: Just a minute. I will get the date if you don't mind. On and prior to the month of August, 1928.

A. I haven't any recollection on it, but I think I was a customer there; I haven't any recollection on it at all.

Q. Did you have a bank account there?

A. I couldn't tell you, sir.

Q. Were you doing business at or about that time under the fictitious name of Australian American Gem Mining Company?

A. Yes, I think I was.

Q. That was your individual business, was it?

A. That is right, sir.

Q. Now, calling your attention to what purports to be a photostatic copy of a deposit receipt of the United States National Bank, dated July 9, 1928, naming as the depositor

the Australian American Gem Mining Co., and showing the deposit of three items totaling $3,205.00, I will ask you if that deposit receipt, or the original of that photostatic copy ever came to your attention?

(Photostat handed to witness.)

Mr. Samuels: Show it to Mr. Meyberg. Do you want to see it, Mr. Meyberg?

(Photostat handed to Mr. Meyberg.)

A. No, I don't recollect ever having seen that before, sir.

Q. Do you recollect having deposited any moneys at or about that time in the name of the Australian American Gem Mining Co.?

A. No, I can't recollect that, sir. I have been trying to see if I could identify the numbers on that, but I can't recollect it.

Q. You can't recollect that?

A. No, sir.

Q. Do you recall whether or not you opened a new account with the bank at or about that time?

A. No, I couldn't remember that, sir. That was a long time ago.

Q. Do you remember having in your possession or receiving checks at or about that time in the amount of $750.00 and $2,075.00?

A. No, it is impossible to remember.

Q. Could the check for $2,075.00 according to your best recollection have been delivered to you by Mr. Woodruff or Mr. Smith?

A. It could have been, but I do not remember it, sir.

Q. You know of no transaction which carried that payment to you at or about that time?

A. I couldn't remember, sir. It is possible.

Mr. Samuels: I offer this photostatic copy of the United States National Bank deposit slip as objector's exhibit next in order.

Mr. Meyberg: In addition to the regular objection, Mr. Reporter, I make the further objection that no foundation has been laid.

(Deposit slip dated July 9, 1928, Australian American

Gem Mining Co., for $3,205.00, marked "Objector's Exhibit No. 8.")

Mr. Samuels: Q. Have you the original deposit slip of this deposit?

A. Not to my knowledge, sir.

Q. I mean setting forth the items here?

A. I don't remember ever having seen that before, sir.

Mr. Samuels: All right.

Mr. Meyberg: Is it your contention, Mr. Samuels, that he would have the original of that deposit slip?

Mr. Samuels: No, he wouldn't have it. He may have a duplicate of it.

Q. Have you a duplicate of the deposit slip?

Mr. Meyberg: Is it your contention that he would have the deposit slip? Under the normal course of banking procedure wouldn't the bank have it?

Mr. Samuels: I asked him if he had a duplicate.

Q. Have you a duplicate of that deposit slip?

Mr. Meyberg: He could have that, if they didn't put it in his bank book. He might not even have a duplicate. You generally make out one of these, and deposit it with the bank.

Mr. Samuels: Q. Have you a bank-book showing your deposits with the United States National Bank in the month of July, 1928, whether in your individual name or in the name of the Australian American Gem Mining Co.?

A. No, sir.

Mr. Meyberg: You might find it if you look for it?

A. What is that?

Mr. Meyberg: You might find it if you look for it?

Mr. Samuels: He said he hasn't got it.

A. I don't think I have it.

Mr. Samuels: You can ask him that afterwards.

Mr. Meyberg: All right. Go ahead.

Mr. Samuels: Q. Do you remember whether or not you authorized your brother-in-law, E. A. Lobree, to draw upon a bank account standing in the name of the Australian American Gem Mining Co. with the United States National Bank?

A. That is just possible.

Q. Do you have any recollection of it?

A. No, I haven't any recollection, but it is possible because he had a power of attorney to act for me.

Mr. Meyberg: Just a minute. He didn't ask you that.

A. I am awfully sorry.

Mr. Samuels: Q. What is your best recollection on the subject?

A. I haven't any recollection that I gave it, sir.

Mr. Meyberg: That is all he asked you.

A. I beg your pardon. I am awfully sorry.

Mr. Samuels: Q. I show you what purports to be a photostatic copy of a signature authorization card of the United States National Bank of Los Angeles. Below the "Name of Firm or Individual" appears "Australian American Gem Mining Co."; on the line "Authorized Signature" appears "E. A. Lobree", with the address, "8021 Geary St., S. F. Cal. Telephone Evergreen 5735. Date 7/21 28 Business Mfg." And ask you whether you ever saw the original of which that purports to be a photostatic copy?

(Photostat handed to Mr. Meyberg and thereafter to the witness.)

A. No, I can't say.

Q. You never saw the original so far as you know?

A. I can't remember. I might have done so, sir.

Q. But you have no recollection?

A. I have no recollection on it, no, sir.

Q. Can you state whether or not what purports to be a photostatic copy of the signature of E. A. Lobree conforms to or is the signature of E. A. Lobree?

A. That I wouldn't like to say.
Q. You wouldn't like to say?
A. No.
Q. What can you say about it?
A. I wouldn't like to say. I haven't any definite recollection of E. A. Lobree's signature today.
Q. Have you ever seen his signature?
A. Oh, yes, I have.
Q. Have you seen it innumerable times?
A. Not recently.
Q. I didn't ask you that. Have you seen it innumerable times?
A. I won't say that. I have seen it several times.
Q. You have seen it only several times?
A. I have seen it quite a lot.
Q. When was the last time you saw it?
A. I couldn't recollect now.
Q. Was it within the last five years?
A. I wouldn't like to say. I can't recollect when I saw E. A. Lobree's signature on a piece of paper. We have had no business together, and I have had no cause to see his signature, and he doesn't write to me.

Mr. Samuels: Shall we adjourn until this afternoon?

Mr. Meyberg: Yes.

Mr. Samuels: Suppose we make the appointed time a quarter past 2:00 this afternoon?

Mr. Meyberg: All right.

Mr. Samuels: I offer this in evidence as objector's next exhibit in order.

Mr. Meyberg: With our regular objection, and on the further ground no foundation has been laid.

(Signature authorization card of United States National Bank of Los Angeles, dated July 21, 1928, marked "Objector's Exhibit No. 9.")

(Thereupon an adjournment was taken until 2:15 o'clock P. M., Thursday, August 28th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Thursday, August 28th, 1941, 2:15 P. M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: Will you read the last part of the record, Mr. Reporter?

(Record read as requested)

A. There were one or two things you asked me on cross-examination, and I have refreshed my recollection during the lunch hour.

Mr. Samuels: Proceed.

A. We did sell quite a number of sapphires—

Q. Whom do you mean by "we"?

A. I sold quite a bit of industrial sapphires to that man Janchower, in New York, and he was the expert for this Precious Gem or Precious Stone Corporation in New York. He was the expert buyer—that is what you would call it—he was the expert buyer for them.

Q. When you say "quite a bit", how much do you refer to?

A. I mean quite a lot, sir. I think there was one amount of three to five thousand which took place.

Q. Three to five thousand what?

A. Dollars; and the second amount ran to about $15,000.00.

Q. Do you think so? Do you know?

A. According to the best of my recollection.

Q. Have you any evidence of it in the way of book accounts or any other documentary evidence?

A. No, I haven't, Mr. Samuels. I have been trying to find it today.

Q. If you can find it will you produce it?

A. Yes, sir.

Q. When was the sale made first?

A. I couldn't tell you.

Q. When was the sale made of $15,000.00 to Mr. Janchower? Was that his name?

A. Janchower.

Q. When was that sale made to Janchower? Was it made to Janchower himself or to this Gem Company?

A. Now, I am not positive whether it was made to the Gem Company or to Mr. Janchower, or to Mr. Janchower for the Gem Company. It is hazy for me to remember that, you see.

Q. When was it made?

A. It was made in 1928 on my way to London. I was only in New York about two weeks or thereabouts.

Q. You tell me when it was made. I didn't ask you any more than that.

A. I beg your pardon, sir.

Mr. Meyberg: That is right.

Mr. Samuels: Q. Is the gentleman still alive, do you know?

A. I don't know. I haven't been in touch with him for a long time.

Q. You didn't seek to sell him any more?

A. I went to London.

Q. I didn't ask you that. You didn't seek to sell him any more?

A. I haven't been in the country.

Q. Haven't you been in the country since 1928?

A. Yes.

Q. You were gone for two years on that trip, weren't you, commencing in September or October, 1928?

A. Two or three years; I am not positive of that.

Q. And how long have you been in the country since? And by the "country" we refer to the United States of America.

A. About three years this time. I have been several times in Canada, though.

Q. Isn't it a fact that you had Mr. Lobree ship from San Francisco approximately two tons of mechanical industrial rough sapphires for sale in New York some one or two or three years prior to 1928, and that you endeavored to sell the same there without success?

A. Prior to 1928?

Q. Yes.

A. Well, two or three years prior to 1928, sir. I think

I was in Australia. I came back from Australia I think in April or May, of 1928.

Q. Where were you in 1923?

A. I think I was in Australia. I am not sure, sir.

Q. Were you not in New York in 1923?

A. I am not positive, sir. I wouldn't like to say for sure.

Q. Were you in New York in the years 1922, 1923, or 1924, or any one of those years?

A. I don't think so. I am not positive. I couldn't say with certainty, sir; but in 1924 I think I was in Australia, and I think in 1922 I was in Australia, and in 1927 I think I was in Australia. I was backwards and forwards so much.

Q. How about 1923?

A. I think I was in Australia. I am not positive, though. I wouldn't like to say for sure, sir. It is terrible to remember those things.

Mr. Meyberg: That is enough.

Mr. Samuels: Q. Do you recall having Mr. Lobree, your brother-in-law, at your instance ship you approximately two tons of mechanical industrial rough sapphires to New York?

A. He might have done that, sir.

Q. Do you recall it, I asked you?

A. No, sir.

Q. You have no recollection on that subject at all?

A. No, sir.

Q. Do you recall storing approximately that amount of material mentioned by me in the Lincoln vaults in New York?

A. I don't remember actually storing it there myself. It was there, but I do not remember the conditions.

Q. Who stored it there?

A. I don't remember, sir.

Q. It was your material, wasn't it?

A. Yes, sir.

Q. Don't you remember who stored it there?

A. No, sir, I couldn't tell you offhand.

Q. You remember that amount of material was stored there, is that correct?

A. Yes. Other times there have been more than that.

Q. You remember that amount was stored there?

A. Yes.

Q. During what period of time was it stored there, can you say?

A. I couldn't tell you exactly.

Q. Was it as early as 1923?

A. I couldn't say right offhand, sir. I couldn't remember the date like that.

Q. When material of that character was in New York did you not offer to sell the same to Mr. Janchower?

A. I sold some to Mr. Janchower.

Q. I said while that material was there did you not offer to sell it to him?

A. It is possible. I—

Q. Did you offer to sell it to him? Just answer "Yes" or "No."

A. I sold him stuff, so I must have offered it to him.

Q. Did he not refuse to buy any portion of it?

A. No, sir, not to me.

Q. Did he not refuse upon the express ground that the cost of cutting that material was too expensive for him to handle it?

A. He never made that statement to me. He purchased from me on two or three different occasions, and then wanted to buy my output.

Q. He wanted to buy your output?

A. He and his crowd—the company that he represented.

Q. But you wouldn't sell it to him for the reasons you have mentioned already?

A. That is right, sir, because—

Q. Just a moment. You wouldn't sell it to him for the reasons you have mentioned already?

A. That is right, sir.

Q. Do you recall shipping to San Francisco in the year 1928 from New York, and from the Lincoln vaults, any quantity of mechanical industrial rough sapphires?

A. No.

Mr. Meyberg: To whom—to any one?

Mr. Samuels: I said shippnig it from New York to San Francisco.

Mr. Meyberg: I didn't get the San Francisco part of your question.

Mr. Samuels: I don't care who it was.

Mr. Meyberg: Read that question.

(Pending question read.)

A. No, I have no recollection of that at all, sir.

Mr. Samuels: Q. Now, it is a fact, is it not, that the advent of custom jewelry impaired the market for your gems domestically?

A. In my opinion I think it made a certain amount of difference, but it is very hard to say. It is only a matter of opinion. Some of the jewelers say it helped it make the people conscious of wearing jewelry.

Q. In your judgment and from your experience as a producer and vendor of the gems we have been discussing—I don't limit it simply to industrial—the gems you have been handling, and produced by your mines, do you think the advent of custom jewelry in 1926 impaired the United States market for your product?

A. For cheap imitation jewelry, but not for genuine gems, I wouldn't think so, sir. I am a stone man, and I deal in rough stones, and I do not deal with finished gems. My opinion wouldn't be worth much because I do not understand much about mounting jewelry.

Q. I am referring to page 272 of the record of testimony on revaluation in action No. 7256-C-Law, and call your attention to the following questions and answers commencing on line 5 of said page:

"Q. Are you familiar with what is termed today as costume jewelry?

"A. Yes."

• • • • •

Mr. Samuels: Q. Do you remember that question being put to you on that occasion, and giving that answer?

A. No, I can't quite recollect that question at all.

Q. You don't recollect it at all?

A. No, sir.

Q. Do you remember the answer "Yes"?

A. No, I do not.

Q. "Q. What has been the effect of that?

"A. That is what ruined the business."

Do you recall that question and answer?

A. No, I don't recall it, sir.

Q. You don't recall that at all?

A. No, sir.

Q. Was your answer true "That is what ruined the business"?

A. Yes, sir, in my opinion that is the thing that upset the business.

Q. That is what ruined it?

A. Yes, sir.

Q. "Q. When did that start?

"A. That started in 1926, in New York, and it spread right across the country. Shore & Company were the first people to start it in New York, and they opened about 20 or 30 stores, and the Hiller people started, and they introduced it to the department stores, and the ladies caught onto it."

Do you remember that question and answer?

A. No, I can't remember that question or answer.

Q. Is that answer correct?

A. Yes, sir.

Q. That answer is correct?

A. Yes, sir.

Q. "Q. That depressed the market on all kinds of semi-precious stones?

"A. Yes."

Do you remember that question and answer?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. You remember that question and answer, do you?

A. I have a slight recollection of it?

Q. You have only a slight recollection of it?

A. Yes.

Q. Was that answer true?

A. Yes.

Q. You left New York for Paris or London—was it London, Mr. Heiser, first?

A. I am really sure it was London. I think I landed in London first.

Q. One moment. Let me get it. "I think some time in September or October, of 1928." Is that correct?

A. Yes, sir, I think that is correct.

Q. Do you remember when you reached London?

A. No, I couldn't say for sure. I don't know whether I stopped off at Southampton for a few days, or not; I couldn't say exactly no.

Q. You had arranged, had you not, to meet in London, a Mr. Jefferson Graves?

A. I have a recollection that I had an appointment, yes, sir.

Q. Only a recollection?

A. Yes, sir. That was a long time ago, you know, and there has been a lot of mixup on this thing since then. I can't remember half of the things that have taken place.

Q. And Mr. Graves was to bring with him to London, was he not, certain gentlemen from Paris whom he represented as experts and outlets of sale of your product, isn't that correct?

* * * * *

A. I wouldn't say it is correct, sir, because I haven't any recollection on it. It is a detail that happened twelve or fourteen years ago.

Mr. Samuels: Q. You haven't any recollection of it?

A. No, sir.

Mr. Samuels: Never mind the details of twelve or fifteen years ago. Just answer the questions.

A. I beg your pardon. I have no recollection of it.

Q. You had some of your materials stored in London, did you not, at that time—in the year 1928, and in the month of October?

A. It is just possible I had, but I can't recollect details on that, sir.

Q. You do not recollect whether you had, or not?

A. No, I couldn't say whether I had, or not. I wouldn't like to say now whether I had, or not.

Q. And do you not recall meeting at the place of storage of your material in London Mr. Jefferson Graves, a Mr. LeQuintree, Mr. Bietrix, and Mr. Poncet?

A. I met so many people in London it would be impossible for me to separate those men out, sir.

Q. Had you heard of Mr. Bietrix before?

A. The name seems familiar to me, but I cannot place it.

Q. Had you heard of Mr. LeQuintree before October, 1928?

A. I think I had, but it is very, very vague to me, sir, and I wouldn't like to make a statement that I know the man. If I had something to refresh my memory, I might know more about it, but I can't remember.

Q. Where did you store your material in London? I am asking you about around the year 1928. Where did you store your material then?

A. In 1928 if I remember correctly there was very little stuff in London. We had sold it all, but I am not positive of that, sir. I think we were very, very short of material in London.

Mr. Meyberg: By "we," you mean whom?

A. Myself. It was shipped to London, and immediately shipped straight out to Germany; and I think when I was in London I was very short of material. It was selling quite readily.

Mr. Samuels: I asked you where you stored it, and I got a very prolific answer, and I will ask that all of the answer be stricken as non-responsive to the question.

Q. I asked you where you stored your material in London, if you stored any at all there in the year 1928?

A. In one of the bank vaults, but I can't remember the exact place.

* * * * * *

Mr. Samuels: Q. We will take, if you will, the copy of the transcript of testimony adduced before the Deputy Commissioner of Corporations of the State of California, in the matter of the investigation and examination of International

Gems. Incidentally, do you know whether or not the permit sought for the sale of stock in that matter was granted, or whether the application was withdrawn?

A. I am not positive about that. I haven't any recollection of it. I know we had decided not to go on with it, if I remember correctly, and it is just possible that we may have withdrawn it.

Q. You decided not to go on with it during the progress of the hearing, is that correct?

A. No, it wasn't that. I forgot exactly what it was, now, but there was something which cropped up from the other side, and we decided not to go on with it.

Q. Who are "we"?

A. Myself. I beg your pardon. I decided and the other people with me.

Q. Was that before the application was filed and the hearing had on the application, or afterwards?

A. Around that period. Just as the application went in, I think. The application went in a week too soon, or we wouldn't have gone on with it. I couldn't tell you the details on it. That was quite a few years ago, you know, and there have been so many things asked me about that.

* * * * *

Q. Can you answer definitely according to any recollection you have whether your determination not to go on with the proceeding was during the progress of the hearing had before the Deputy Commissioner or subsequent to the completion of that hearing, or prior to the hearing?

A. I couldn't tell you, sir.

* * * * *

Q. "Q. Do you know a Mr. Albert Lequentric?

"A. Yes sir, one of the shareholders of Mr. Graves company, or one of his directors, in Paris."

Do you remember that question and answer?

A. No, I don't remember the question or answer.

Q. Does that refresh your recollection that you knew Mr. LeQuintrec?

A. No, sir.

Q. It does not?
A. No, sir.

* * * * *

Q. You were shown by the Referee, or by your attorney, one or the other, an affidavit—here it is—an affidavit of one A. LeQuintrec. This is what purports to be a photostatic copy of it. And then Mr. Goldman asked you the question:

"Q. Will you state what is the truth in respect to those matters?"

Referring to the contents of the affidavit.

A. Well, I explained pretty well all that previously when I said I went to Paris with those gems.

Q. "Q. If you will limit yourself to the particular portions of that transaction which you had with Mr. Lequentric —the conversations at which Mr. Lequintree was present, I think that will cover it.

"A. Well, Mr. Lequentric was present on two or three occasions in Paris. They sold, I think that was the gentleman that sold one of those stones, twelve hundred dollars, so that alone shows you that I did have stones of value."

Do you recall those questions and answers?

A. Mr. Samuels, there have been so many questions—

Q. Do you recall those questions and answers? Just answer "Yes" or "No."

A. There were so many questions, and so much jumble on this, that I can't recall those questions.

Mr. Samuels: I ask that go out as not responsive to the question.

Q. I asked you whether you recalled those questions and answers.

A. No, I do not.

Q. You have no recollection of them at all?

A. No, sir.

Q. Do you recall whether or not Mr. LeQuintree purchased a stone from you, or purchased stones from you, and sold one of them for $1200.00?

A. No, I haven't any recollection of that.

Q. You haven't any recollection on that at all?

A. No, I can't remember that.

Q. Have you any recollection that he sold any stones for you at all, or bought any from you on that visit to Paris in 1928?

A. I can't recollect now, sir.

Q. You can't recollect now?

A. There has been so much that I have been doing since then.

Mr. Samuels: "You can't recollect"—that is your answer.

Q. "Q. About how large a stone was that?

"A. I am not quite sure now.

"Q. A sapphire?

"A. Sapphires. They sold sapphires and opals.

"Q. But one of the stones he sold for twelve hundred dollars?

"A. Twelve hundred dollars; the company, that was their company, firm, association, was formed years before I ever met this gentleman. And, relating to the contract, Mr. Graves was here and he met Mr. Barstow, the man who formed the company."

Do you recall any of that testimony?

A. No, sir. It is all jumbled up to me.

Q. Then you have no recollection, have you, of any meeting in London at which your wife was present, Mrs. Lillian Heiser, in a vault of a bank there where you had some of your uncut stones deposited or stored, and at which meeting Mr. Jefferson Graves was present, and the other individuals whom I have named were present—you have no recollection of that at all?

A. No, I can't recall it, sir.

Q. You can't recall such a meeting where any one of those gentlemen were present, is that right?

A. Yes.

Q. Graves or LeQuintrec or Bietrix or Poncet?

A. I met so many people over that period of time—

Q. You have no recollection of that?

A. No, sir.

Q. You don't remember whether you showed them any

of your stones, and that at that time they all stated the stones were of such poor quality and so small that they couldn't use them?

A. I can't recollect, sir, on that.

Q. You can't recollect it. You don't know that you were told at that time by them that they had evidently been cut—that some one had worked upon them and cut the stones? You don't recall that?

A. No, sir.

Q. You don't recall that you then admitted to them that your stones were what was left over after the more desirable stones had been sold or removed from them?

A. No, I don't remember those incidents that you are speaking of.

Q. Do you remember that you then told them that you expected to have some samples from your Australian mines arrive in London, and that you would visit them in Paris and display those samples which you stated would be of superior quality?

A. I don't recollect that, sir.

Q. You don't recollect that at all?

A. No, sir.

Q. Do you recall meeting in Paris Mr. Graves—and I refer now to the months of October or November, of 1928—Mr. Graves or Mr. LeQuintree or Mr. Bietrix, and displaying certain packets of stones which you said arrived in London and had just come from your Australian mines?

A. No.

* * * * *

A. I answered that I can't place that meeting which you are referring to.

Mr. Samuels: Q. You can't place that?

A. No, sir. It was so many years ago.

Q. Coming to page 175, line 7:

"Q. Did you have a large parcel of sapphires in the Bank of Australia in London at that time?

"A. Yes, sir."

Do you recall that testimony?

A. No, sir.

Q. That is the time of your trip to London in 1928.
A. Yes, sir.
Q. "Q. Approximately what value?

"A. About 12,000 pounds, $60,000."

Do you remember that testimony?

A. No, I do not remember that.
Q. "Q. Did you meet Mr. Lequentric in London with Mr. Graves?"

They didn't wait for a minute.

"Q. Did you show him some sapphires and opals there?
"A. Yes."

Does that refresh your recollection?

A. No, sir, it does not.
Q. It does not?
A. No, sir.
Q. All right. Now, then, I show you what purports to be a photostatic copy of a letter dated the 18th of October, 1928, addressed to Mr. Calvin Smith and Mr. Barstow, at Los Angeles, and purporting to carry your signature at its conclusion. Will you look at it, please?

(Photostat handed to the witness and thereafter to Mr. Meyberg.)

Mr. Samuels: In the meantime will you look at this, kindly, Mr. Meyberg.

(Another document handed to Mr. Meyberg.)

Mr. Meyberg: Do you want him to look at this?

Mr. Samuels: Yes.

(Last document handed to Mr. Meyberg handed to witness.)

Mr. Samuels: Q. Look at the signature on the last page, and will you say whether or not that appears to be a true copy of your signature?

A. No, I couldn't say whether that is a true copy of my signature, or not.

Q. What is your best belief on the subject?

A. I don't believe it is.

Q. Look at the letter and answer whether or not you wrote it?

A. It might be. This is dated 1929, and it could be my signature, but I wouldn't like to swear to it.

Mr. Meyberg: He isn't asking you, Mr. Heiser, whether you remember signing it. He asked you whether it looks like your signature.

A. It looks like my signature, yes.

Mr. Samuels: Q. Can you identify your signature?

A. No.

Mr. Meyberg: Supposing you read the letter.

Mr. Samuels: I asked him about his signature. Pardon me.

Q. Can you identify that as your signature?

A. It looks like my signature.

Q. Can you identify that as your signature? That permits of an answer "Yes" or "No."

A. Well, it looks like my signature, yet I am reluctant to say.

Q. Then you can answer "Yes" or "No."

A. It could be my signature.

Q. I asked you whether you could identify it. Not what it could be.

A. It looks very much like my signature.

Q. Will you identify that as your signature?

Mr. Meyberg: Are you willing to swear whether that is your signature, or not, Mr. Heiser? That is what he is asking you.

A. I wouldn't like to swear that it was, and I wouldn't like to swear that it wasn't. I am in doubt about it.

Mr. Samuels: That is all I am trying to get.

Q. Will you look at the letter and state whether or not that appears to be a true copy of a letter which you transmitted to the addressees mentioned at the top of the first page?

Mr. Meyberg: You can now read the letter, Mr. Hei

Mr. Samuels: That is all right.

(Witness examined letter.)

A. The subject matter of that letter is very much like as if it was coming from me, sir.

Mr. Samuels: I didn't ask you that.

A. I beg your pardon.

Q. Can you state whether or not you sent a letter to the addressees of which that is a true photostatic copy?

A. No, I couldn't tell you if I did.

Q. Can you state whether or not you sent a letter to the addressees containing the substance of what appears in that photostatic copy?

A. I couldn't remember it now, sir, no.

Q. And you can't identify the photostatic copy as being a letter which you sent to the addressees, is that correct?

A. No, I can't identify it. It might be my signature, and might not be my signature. I couldn't say for sure.

Q. I am talking about the letter—not the signature.

A. The letter I can't say.

Q. You wouldn't state that you wrote a letter to that effect to the addressees?

A. No, I haven't any recollection at all of this letter, sir.

Q. Does this opening paragraph: "I arrived in London and the buyers were there to meet me rearing to go (as our friend Rogers would say)! Unfortunately my registered parcels were not there on time, and there was a mix up with some of the Queensland stuff. Luckily I had my samples from America with me, which saved the day." Does that recall to your recollection the meeting with anybody in London to see your Queensland stuff?

A. That was twelve to fourteen years ago.

Mr. Samuels: I didn't ask you that.

A. I can't remember.

Q. All I asked you was if it recalled to your recollection a meeting with anybody in London to see your Queensland stuff?

A. No, I can't recollect it.

Q. It doesn't?

A. No.

Q. And it doesn't recall to your recollection the meeting in London at or about that time with any persons whom you referred to as the buyers?

A. No, sir.

Q. I think you stated that this was a type of a letter that you would write, is that correct?

A. No, I didn't say that.

Q. What was your language?

A. I said I might have written it.

Q. What makes you say that?

A. I think I might have written it—I might, and I might not.

Q. What portion of that letter gave you the belief that it was the style of letter which you might have written?

A. Well, I couldn't say, sir. It is all so hazy. There have been so many letters and so many depositions, and reading from so many different depositions and photostats I couldn't say. How could you expect me to identify an article like that?

Mr. Samuels: I didn't ask you to identify it. I ask that go out.

A. Or to remember it, even.

Mr. Samuels: I ask that all go out as non-responsive.

A. How could a man remember—

Mr. Samuels: I ask that all of your answer, except "I couldn't say, sir," be stricken as non-responsive, and self-serving and argumentative, and I will ask you to listen to the question, kindly, Mr. Heiser.

A. I beg your pardon.

Mr. Samuels: And if you will, you will not respond in that manner.

Mr. Reporter, will you give me the answer where he said, "It is the kind of a letter which he might have written," just after he examined it. I want to use the language of the witness, so that I will not be in error as to his language.

(Record read as follows:

"A. The subject matter of that letter is very much like—as if it was coming from me, sir.")

Q. Now, then, what made you state after reading this letter, that it was "very much like as if it was coming from me"?

A. I couldn't remember now, sir.

Q. Is there any portion of that letter which you have read which would indicate it is the form or type or contents of a letter which would have come from you?

A. No. The only thing I could remember, it mentions the Queensland Government.

Q. Just because it mentioned the Queensland Government?

A. Yes, sir.

Q. Otherwise no?

A. Yes, sir.

Q. There is a reference here in the letter, and I am reading it to you again—rather, I am reading page 2:

"I was in hopes of having a cable from you to say that you had sent at least £1,000 to Australia long before this."

Did you at that time expect to have £1000 sent to you from Australia?

Mr. Jacobs: Sent to Australia.

A. I can't recollect, sir.

Q. You can't recollect that?

A. No, sir.

Q. "Has Mr. Rogers sold any stock?" Who is Mr. Rogers?

A. I can't recollect, sir.

Q. You don't know?

A. No.

Q. That referred, did it not, to the stock of the Nevada corporation?

A. I have not the slightest idea.

Mr. Samuels: I offer this letter in evidence as objector's exhibit next in order, whatever it may be.

Mr. Meyberg: Objected to on the regular grounds, which includes no foundation laid and hearsay.

(Letter dated October 18th, 1928, to Mr. Calvin Smith and Mr. Barstow from Morrie Heiser, marked "Objector's Exhibit No. 10.")

Mr. Samuels: Q. Have you a recollection of seeing an affidavit of which this is a photostatic copy at the hearing of the application by the Division of Corporations of the International Gems?

(Document handed to Mr. Meyberg and thereafter to the witness.)

Mr. Meyberg: Are you prepared to state, Mr. Samuels, that this is a photostatic copy of what you say?

Mr. Samuels: I asked him that.

Mr. Meyberg: Or that it purports to be?

Mr. Samuels What did I say? Read that.

(Pending question read.)

Mr. Samuels: Of which this purports to be a photostatic copy.

Mr. Meyberg: If you know it is, I will take your word.

Mr. Samuels: No, I accept the amendment.

A. I don't recollect, sir.

Q. You don't recollect it?

A. No, sir.

Q. I show you a letter dated the 11th of October, 1929, and at the top it has "Strand Palace Hotel, London, W. C. 2. Attention International Trading Company, Paris. Dear Jeff and Mr. Lequantrie," and bearing at the end the signature "M. E. Heiser," and ask you after the presentation to your counsel whether it bears your signature, or more accurately I will ask you whether the signature is in your handwriting, and whether you can identify your handwriting?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. I wouldn't like to say that this is my signature, sir.

Mr. Samuels: I didn't ask you whether you would like to say, or not.

Q. Can you or can you not identify that as your signature?

A. No, I can't.

Q. You cannot?

A. No.

Mr. Meyberg: Does the signature look like yours?

A. That "s" doesn't look like mine, in the middle of the signature.

Mr. Samuels: Q. Does the signature as a whole look like your signature?

A. No, sir.

Q. Do you remember writing to Mrs. Graves that letter?

A. Mrs. Graves?

Q. Pardon me. Do you remember writing to International Trading Company, Paris, and the individual addressees, "Dear Jeff & Mr. Lequantrie"—

Mr. Meyberg: Answer the question.

Mr. Samuels: He is just waiting for me to complete the question.

Q. Do you remember addressing them at or about that date?

A. No, sir. I have no recollection of this at all.

Mr. Meyberg: What is the date?

A. "11th October, 1929."

Mr. Samuels: It is in the record.

Q. Did you at that time on October 11th, 1929, "have some of the most prominent British people interested and they have under their option in British Guiana 140 miles concession to build a railway and two miles of country each side with all gold and diamond rights and timber"?

A. If I said I had I did.

Mr. Samuels: I didn't ask you that. I didn't ask you what you said you had.

* * * * *

Q. Have your any recollection on the subject?

A. No, sir.

Q. Have you any recollection of inquiring of International Trading Company, and/or Jeff, Mr. LeQuintree, Mr. Bietrix, or Mr. Walker, if they were interested in this—referring to the particular matter I have just referred to?

A. No, I can't recollect now, sir.

Q. Are the words "Mr. Beatrix" in your handwriting, appearing on page 1, and being an insertion?

A. I don't know. I don't think so.

Q. You don't think so?

A. No.

Q. Will you say you did not write that letter, then?

A. I have no recollection of that letter.

Q. Will you say you did not write that letter?

A. And I won't say I did either.

Mr. Samuels: I didn't ask you that.

Mr. Meyberg: You can say whether you did or did not. Your answer is you won't say whether you did or did not?

A. That is right.

Mr. Samuels: That is sufficient. We will offer this letter in evidence as objector's exhibit in due order.

* * * * * *

(Letter dated 11th October, 1929, to "Dear Jeff & Mr. Lequantrie," from M. E. Heiser, marked "Objector's Exhibit No. 11.")

Mr. Samuels: Q. Did you ever leave with Mr. LeQuintree a coal report?

A. I can't recollect now, sir, whether I did, or not.

Q. Were you stopping on the 11th of October, 1929, at the Strand Palace Hotel, in London?

A. I am not sure, sir.

Q. What is your best recollection?

A. I haven't any recollection on it; I wouldn't be able to remember that. It would be very difficult.

* * * * * *

Q. Now, I show you a letter dated November 14, 1928,

addressed "My dear Maudie & Will," and signed "Morrie Heiser," and after submitting it to your counsel I will inquire whether or not you can identify the signature appearing at the bottom of that letter as yours?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. No, I can't identify that, sir.

Q. Will you say it is not your signature?

A. It doesn't look like my signature, yet it might be. I wouldn't say "Yes" and I wouldn't say "No"—there have been so many signatures, and so many papers shown me.

Mr. Samuels: Please answer the question. The other is going to be stricken out.

A. All right, sir.

Mr. Samuels: I know what your explanation is, and I am leaving that to the Court as Mr. Meyberg is.

Q. Now, do you recall writing a letter of this type to Mrs. Graves?

A. No, I do not, sir.

Q. Or her husband?

A. I do not, sir.

Q. Will you say after examining that letter that you did not write it to them?

A. I have no recollection of this letter, sir.

Mr. Samuels: I did not ask you that.

Q. I said looking at its contents will you say it did not proceed from you?

A. I wouldn't be able to say now after all these years.

Q. It may, and it may not, is that your answer?

A. I wouldn't like to say, sir, after all these years.

Q. Does this refresh your recollection, that Mr. Beatrix sold one parcel of seconds (30 ounces) for 35,000 francs?

A. No, sir.

Q. Did you have at or about November 14th, 1928, 25,000 ounces of cheap industrial sapphires in New York?

A. In 1928?

Q. Yes.

A. I couldn't tell you, sir. I had a large amount. I must have had. In 1928?

Q. Yes.

A. Oh, I should say I had about—oh, I would say about over a ton.

Q. I am asking you whether you had 25,000 ounces of cheap industrial sapphires in New York? If you had that many, or more, then you had that many.

A. I can't recollect for sure.

Q. You can't answer that?

A. No, sir.

Q. Do you recall at any time offering them to either Mrs. Maud Loller or her husband, Will Loller, or Jeff, for the formation of a corporation?

A. I haven't the slightest idea.

Q. You haven't the slightest idea?

A. No, sir.

Q. You have no recollection at all?

A. No, sir.

Q. Did you know that Mrs. Maud Loller—referred to in this letter as "Maudie"—was going to the hospital for treatment of any kind?

A. I can't recollect, sir.

Q. You do not recall that at all?

A. No, sir.

Q. Did you know a Mrs. Benjamin?

A. Well, I might have known twenty Mrs. Benjamins.

Q. Did you at that time know a Mrs. Benjamin? If you knew twenty, you knew one.

A. I can't recollect.

Q. You can't recollect?

A. Not at this time, no, sir.

Q. Do you recall any advice received by you from a Mrs. Benjamin—

A. No.

Mr. Samuels: I haven't finished the question.

A. I beg your pardon. I am awfully sorry.

Mr. Samuels: That is all right.

Q. (Continuing:) —that Mrs. Maudie Loller was going to the hospital?

A. No, I don't recollect, sir.
Q. Did you give a large light opal to Jamie?
A. Jamie who?
Q. I don't know. There is a reference there to "Jamie."
A. No, I don't know who that is.
Q. Did you know Jamie Graves?
A. I might have, but I don't recollect it.
Q. Do you recollect her?
A. What?
Q. Do you recollect her?
A. No, sir.
Q. Do you recollect having given to Mr. Beatrix an opal to carve the figure of a person by the name of Jamie in it in the ballon dance—or balloon dance—whichever it may be?
A. I don't know, sir.
Q. You don't recall?
A. It is all Greek to me.
Q. It is all Greek to you?
A. Yes.
Q. You don't know that Mr. Walker's daughter Jamie was a dancer?
A. I haven't any recollection of it. She might have been.
Q. I didn't ask you that. I asked you if you knew that Mr. Walker's daughter Jamie was a dancer?
A. That was in 1929, you know.
Q. I know that. Did you, or didn't you know it?
A. I can't recollect it, sir.
Q. You can't recollect it?
A. No, sir.

Mr. Samuels: All right. We will offer this letter in evidence as "Objector's Exhibit 12," the letter of November 14, 1928.

Mr. Meyberg: The same objection on this, Mr. Hart.

(Letter dated Nov. 14, 1928, to "My dear Maudie & Will," from Morrie Heiser, marked "Objector's Exhibit No. 12.")

Mr. Samuels: Q. Referring now again to the photostatic copy which is in evidence, and which purports to be a letter dated the 18th of October, 1928, addressed to Mr. Calvin Smith and Mr. Barstow, and which purports to bear your signature, or which bears the signature of "Morrie Heiser"—

Mr. Meyberg: You mean which you have offered?

Mr. Samuels: Which I have offered in evidence.

Mr. Meyberg: Yes..

Mr. Samuels: It is in evidence.

Mr. Meyberg: It has only been offered. You mean which you have offered, but it isn't in evidence yet.

Mr. Samuels: Yes, it is. What is the number of this exhibit?

Mr. Meyberg: You mean it has been offered.

Mr. Samuels: It has been introduced in evidence so far as this deposition is concerned; whether it will be accepted in court is another thing. Is that what you mean to say?

Mr. Meyberg: That is what I meant.

Mr. Samuels: It is in evidence so far as we are concerned. All of it is in evidence for the purpose of the deposition.

Q. I call your attention particularly to the following language on page 2:

"In this mail I am sending to the Golden State Gem Company the two thousand shares of the ordinary stock of the Heiser Burmah Sapphire Ltd."

Do you recall at any time writing to either Mr. Smith or Mr. Barstow to that effect?

A. No, sir, I can't recall that.

Q. Did you at any time send to the Golden State Gem Company 2,000 shares of the ordinary stock of the Heiser Burmah Sapphire, Ltd.?

A. No, sir.

Q. You do not?

A. I can't remember it.

Q. Oh, you can't remember it?

A. No, sir.

Q. Is the Heiser Burmah Sapphire, Ltd., in liquidation?

A. I am not sure, sir.

Q. You are not sure whether that is in liquidation, or not?

A. No, sir, not at present.

Q. Did you know a Mr. Henry Gillies, purporting to be Registrar of Companies in Brisbane, State of Queensland?

A. No, sir, I can't remember the name.

Q. What?

A. I can't remember the name.

Q. Do you know that registration has to take place of the capitalization of a company, or as you have referred to it of a syndicate, formed under the laws of Australia, in the office of the Registrar at Brisbane, if it was a Brisbane company—did you know that?

A. No, I don't know anything about registration of company matters. I am not a company man.

Q. Do you know that in registering the company has to set forth the list of persons holding shares in the company?

A. No, I didn't know that, sir.

Q. You do not know that?

A. No, sir.

Q. You do not know whether that list was registered then, do you?

A. No, sir.

Q. Were these companies called joint stock companies in Australia?

A. I couldn't tell you now, sir.

Q. You don't know that?

A. No.

Q. Did you own of the shares of stock of that company, Heiser Burmah Sapphire, Ltd., 8,239 shares?

A. It is just possible, but I couldn't say right offhand now, sir.

Q. What is your best judgment?

A. I haven't any recollection on it now, sir.

Q. Have you any recollection at all of the number of shares you owned?

A. No, sir.

Q. Do you know whether you owned more than 100?

A. I couldn't recollect now, sir.

Q. You couldn't say whether at any time during the life of that company you owned more than 100 shares of its common stock, is that right?

A. I couldn't say, no.

Q. You couldn't say?

A. I couldn't say exactly how many I had.

Q. Did you know a Mr. Colin C. Corrie?

A. The name is familiar, but I can't place it.

Q. You can't place him?

A. No.

Q. Do you know whether he was a stockholder of that company?

A. It is possible—no, I couldn't tell you.

Q. You couldn't answer that?

A. I left the country just as the company was formed, and what took place after I left I couldn't say, sir.

Q. You were never back there after that?

A. I have been back there I think twice, but I went to the fields; I didn't go into the city.

Q. You did not meet Mr. Corrie after that, then?

A. Not to my recollection.

Q. Not to your recollection?

A. No.

Q. And did you know whether he was an officer of that company?

A. That I couldn't tell you now, sir.

Q. Could you tell me who the secretary of that company was?

A. No, sir. What is it—fifteen or sixteen years ago you are asking me about?

Q. No. I am asking you as late as—one moment and I will get it—the corporation was only formed in 1929, apparently.

Mr. Samuels: Q. Referring now to either the year 1928 or 1929 did you know who the secretary of the corporation was?

A. No, sir.

Q. Or of the company, rather?

A. No, sir. I was not in the country in 1929. I was in Europe.

Q. And you did not know who the secretary of that company was at any time thereafter?

A. No, I wouldn't remember that, sir.

Q. You wouldn't remember that?

A. No.

Q. Well, haven't you heard whether or not the company is in liquidation?

A. No, I have no recollection of having heard, sir.

Q. So far as you know, the company is a going concern, is that right?

A. I have no recollection on it. I haven't heard, sir.

Q. I am talking about the present time. So far as you know the company is a going concern, is that right?

A. I have no recollection.

Q. You have no recollection at the present time?

A. Yes, that is right.

Q. Have any of the products of the mines owned by that company been delivered to you within the last five years?

A. No, they have not.

Q. They have not?

A. No, sir.

Q. How about the preceding period—within a year before then?

A. I can't recollect, sir. It goes back too far.

Q. When can you recollect last having received the products from the mines of that company?

A. It was shipped to London.

Q. I didn't ask you that. When can you recollect last having received the products from the mines of that company?

A. I can't recollect when, sir.

Q. You can't recollect when?

A. No.

Q. You can't say whether it was in 1928, 1929, or 1930?

A. No, sir.

Q. Is that right?

A. Yes, sir, that is right.

Q. You do not know whether in the year 1928 that company was in liquidation, do you?

A. Yes, the company was shipping in 1928; I am sure it was shipping in 1928.

Q. Was it shipping in 1929?

A. I think so.

Q. Are you sure of that?

A. I am nearly sure, sir. That is a long time to remember.

Q. I am asking you for the best of your recollection. At

that time it was shipping according to the best of your recollection, is that right, in 1929?

A. Yes, sir, in 1929 it was shipping.

Q. What can you say with respect to the year 1930?

A. I am not sure.

Q. You are not sure?

A. No; it is so hazy.

Q. Did you have an address at any time at Parbury House, Brisbane?

A. Did I personally?

Q. Yes.

A. I can't recollect having that address, sir.

Q. Did any of your companies have an address at that place?

A. It is possible, but I haven't any recollection on it now, sir.

Q. Do you know an American and Australian Gem Mining Syndicate, of Brisbane?

A. Of Brisbane?

Q. With the address Brisbane?

A. I can't recollect it now, sir.

Q. Did you do business under any fictitious name containing the name "Syndicate"?

A. It is just possible.

Q. Don't you recall?

A. I don't recall it now, sir. That is fifteen or sixteen years ago you are talking of there.

Q. Do you at the present time use any fictitious name in your operations—

A. No, sir.

Q. One moment.

A. I beg your pardon.

Q. When did you last use a fictitious name in any of your operations?

A. Oh, it was quite a long time ago, sir. I haven't been doing much business in that line recently.

Q. I show you a typewritten letter which purports to bear the signature "M. E. Heiser," and which purports to have the date of October 9th, 1929, and addressed to one L. LeQuentrix, International Trading Company, Paris, and ask you whether the signature "M. E. Heiser" is your signature?

Do you want to look at it, Mr. Meyberg?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. It doesn't look like it. There is entirely another name there.

Mr. Samuels: I didn't ask you that.

Mr. Meyberg: Can you swear that is your signature?

A. No, sir.

Mr. Meyberg: That is what he asked you.

A. No, sir.

Mr. Samuels: Q. What is your best recollection and belief on the subject?

A. I don't believe it is my signature.

Q. Now, then, looking at this letter, can you say whether or not a letter of that substance or character was addressed by you to the addressee?

Mr. Meyberg: Now, he is asking you to read it, Mr. Heiser.

Mr. Samuels: That is right.

A. No, I don't recollect, sir.

Q. You don't recollect?

A. No.

Q. Will you say it was not written by you?

A. I would rather say it was not written by me than that it was.

Q. I will grant that, but for what reason?

A. Because I do not believe it is my letter.

Q. Did you ever see the original of a signature card of the United States National Bank of Los Angeles of the character which I am now showing you. This purports to be a photostatic copy. Show it to your counsel, if you will.

(Photostat handed to the witness and thereafter to Mr. Meyberg.)

Mr. Samuels: This letter of October 9th, 1929, is offered

in evidence as objector's exhibit next in order; and this letter of October 9th, 1929, is subject to your objections to the same extent, Mr. Meyberg. You want your same objections, and also that there is no foundation, is that correct?

Mr. Meyberg: Yes. I think "no foundation" was in my original objection anyhow.

(Letter dated 9th October 1929 to M. LeQuentrix from M. E. Heiser, marked "Objector's Exhibit No. 13.")

A. What was the question on this?

Mr. Samuels: Read the question to the gentleman.

(Pending question read.)

A. I don't remember having seen the original of that photostat, sir.

Q. Looking at this photostatic copy, or what purports to be a photostatic copy of a signature card signed by Golden State Gem Co., and signed "Walter Calvin Smith, Business Address, 726-28 San Pedro St., Tel. ME-0318"—is that "ME"?

Mr. Meyberg: "ME," I guess.

Mr. Samuels: "ME-0318: Introduced by Mr. Heiser (Australian-Am. Min. Co.), date Aug-16/28," having read that to you, does that refresh your recollection in any manner whatsoever?

A. No, sir.

Q. Have you any recollection of introducing Mr. Smith or the Golden State Gem Co.—

A. No, sir.

Q. (Continuing:) —to the United States National Bank?

A. No, sir, I have no recollection of it at all.

Mr. Samuels: All right. We will offer this card in evidence—

A. And the reverse side? Did you see Mr. Walter Calvin Smith sign an original of which this purports to be a photostatic copy?

A. Not to my recollection, sir.

Q. You were not present at the time?

A. I have no recollection of it at all.

Mr. Samuels: We will offer this as objector's exhibit next in order.

Mr. Meyberg: Did you ask him whether that was his signature?

Mr. Samuels: No, it is "Introduced by Mr. Heiser." I will not say that that is his signature.

Mr. Meyberg: Oh, all right.

Mr. Samuels: I don't know whether that is his signature, or not.

Mr. Meyberg: I don't either.

Mr. Samuels: I ask that it be marked objector's exhibit next in order.

Mr. Meyberg: Don't forget my objection, Mr. Reporter.

(Photostatic copy of signature card of Walter Calvin Smith dated August 16, 1928, marked "Objector's Exhibit No. 14.")

Mr. Samuels: Q. Do you remember the opening of the account by the Golden State Gem Company of Nevada on August 16, 1928, with the United States National Bank?

A. No, sir.

Q. You do not?

A. No, sir, I do not remember that.

Q. You were not present, were you, at the time of the opening of any account of that type?

A. Not to my knowledge, sir.

Q. Do you know of the deposit with that bank in such an account on or about August 16, 1928, of $9,223.00?

A. No.

Q. Or any sum whatsoever?

A. No, I haven't any recollection of it.

Q. You haven't any recollection of it?

A. No, sir.

Q. I will show you the photostatic copy first. Both of you may look at it. It just supplements the other.

(Photostat of deposit tag handed to Mr. Meyberg and thereafter to the witness.)

Q. The subject matter of that photostatic copy is wholly unknown to you?

A. That is correct.

Q. And you have no recollection of any of those items on that photostatic copy of the deposit tag?

A. No, sir.

Q. Or of any other features of that deposit tag?

A. No, sir, I can't recollect it.

Q. And you were not present in the bank—

A. Not that I can recall.

Mr. Samuels: Pardon me. I have not finished.

Q. You were not present in the United States National Bank at any time with Mr. Walter Calvin Smith when such an account was opened, or when a deposit was made to such an account?

A. I cannot recollect having been there, sir.

Q. To the best of your knowledge what do you say?

A. I can't remember.

Q. You can't remember?

A. No.

Mr. Samuels: I offer that next in order,

Mr. Meyberg: And the same objection.

(Deposit tag of Golden State Gem Co., dated August 16, 1928, marked "Objector's Exhibit No. 15.")

A. While you were talking about Queensland there—

Mr. Samuels: One moment.

A. There was something that came back to my mind, and I had a paper, Mr. Samuels—

Mr. Samuels: Don't put this in the record until we find out what it is.

A. I would like it to go into the record.

Mr. Samuels: I want to find out what it is first.

(Off the record.)

Mr. Meyberg: I think this should be in the record. Mr. Heiser, did you say you had some explanation which you wanted to make with reference to some answer you have given in your deposition—do I understand that correctly?

A. Yes, sir, that is what it is.

Mr. Meyberg: In this deposition here?

A. Yes, sir.

* * * * * *

Mr. Samuels: With respect to what matter do you want to make an explanation?

A. With respect to my representing the Queensland Government at the Panama-Pacific Exposition. I was sent over here by the Queensland Government to represent them at the Panama-Pacific Exposition to cut gems, and to sell them, and to make a general demonstration. The Government at first was going to pay my passage, and all my materials, but on account of the war conditions they did not feel they wanted to pay my fare.

Mr. Samuels: One moment. We ask "on account of the war conditions—"

A. On account of shortage of money.

Mr. Samuels: "On account of shortage of money" we ask be stricken as hearsay.

A. On account of conditions they didn't want to pay my fare.

Mr. Samuels: I ask that be stricken as a conclusion of the witness.

A. And they agreed to pay for all my merchandise—

Mr. Samuels: Pay what?

A. Pay for the merchandise to be transferred from Australia to America, and bring it into the country, and provide me with space in the Exposition, and space to cut my gems, space to demonstrate the gems, power, and access to and from the grounds with my help. I had several men cutting there, and I was also demonstrating there.

Mr. Samuels: One moment. "I had several men cutting there," I ask be stricken.

Mr. Meyberg: Let him make his explanation, and then you can move to strike it out.

Mr. Samuels: That is not an explanation of your authority. Just a moment. You have given that before, and it is in the record.

A. While I was cutting, and had men working for me, I was called on many occasions to tell the people who came along different conditions that prevailed in the Australian fields—the sapphire and opal fields.

Mr. Samuels: We object to that as not in any wise relating to any question, and not in any wise an indication of authority or representation.

A. All right.

Mr. Samuels: One moment. And purely hearsay, self-serving, and the conclusion of the witness.

A. Well, whilst I was cutting there and demonstrating—

Mr. Samuels: Move to strike it out upon those grounds.

A. While I was cutting there, and while I was demonstrating there, I always considered myself as a man—

Mr. Samuels: I ask that be stricken as a conclusion of the witness.

A. Well, I had—

Mr. Samuels: And self-serving as to what he considered himself.

A. I beg your pardon.

Mr. Samuels: Anything further you have to say on the subject?

A. Yes, sir. I considered I was representing the Government because I was the only man from the State of Queensland cutting gems and demonstrating them, because all the other exhibits were in bond, and my gems were out of bond, and I had a permit to sell them.

Mr. Samuels: One moment. I ask that all be stricken — "I considered myself this and that," and what follows, upon the ground it is purely the conclusion of the witness, it is self-serving and argumentative; it is not responsive to any question which has heretofore been asked the witness in connection with his representation, or his asserted representation of the Queensland Government, or any portion of Australia, or the Government of Australia, or any state therein.

A. And I had a letter from the Government officials in Australia and Queensland—

Mr. Samuels: One moment. We object on the ground the letter is the best evidence.

A. I am trying to find the letter, and if I can locate it I will turn it over to Mr. Samuels. The letter was—

Mr. Samuels: One moment. We don't want the contents of the letter. We object to that upon the ground the witness said he was trying to find the letter, and if so he will turn it over to Mr. Samuels, and until that is done the contents of this letter are inadmissible.

A. Well, on account of that letter I considered myself representing the Government, although not in an official capacity.

Mr. Samuels: One moment. I object to that—

A. And I—

Mr. Samuels: One moment. I move that be stricken out on the ground it is but the conclusion of the witness. The unknown substance of a particular letter, and his determination and his consideration of whether he was a representative of the Government on account of the letter is inadmissible.

Is that all?

Mr. Meyberg: Is that all?

Mr. Samuels: I mean the explanation.

A. Yes.

* * * * *

Mr. Meyberg: This deposition is closed.

* * * * *

M. E. HEISER,
(Seal) By HELEN FLANAGAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 24, 1945.

State of California, Northern District of California, City and County of San Francisco, ss.

I hereby certify that on the 26th, 27th and 28th days of August, 1941, before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, California, personally appeared pursuant to Notice of Intention to Take Deposition, hereto annexed, M. E. Heiser, a witness called on behalf of the debtor, Leonard J. Woodruff, herein; and T. W. Champion, Esquire, and Louis A. Fischl, Esquire, represented by Oscar Samuels, Esquire, and Teyis Jacobs, Esquire, appeared as attorneys for the said debtor, Leonard J. Woodruff; and Leonard J. Meyberg, Esquire, appeared as attorney for M. E. Heiser; and the said M. E. Heiser being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that the said deposition was then and there recorded stenographically by Frank L. Hart, a competent official and disinterested shorthand reporter, appointed by me for that purpose and acting under my direction and personal supervision, and was transcribed by him, and that the deposition is a true record of the testimony given by the witness.

I further certify that when the testimony was fully transcribed, the deposition was submitted to the witness, M. E. Heiser, for examination, was read to or by him, and was signed by said witness.

And I further certify that the said deposition has been retained by me for the purpose of securely sealing it in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that the exhibits hereto attached and marked "Objector's Exhibits Nos. 1 to 15," inclusive, are the exhibits referred to and used in connection with the deposition of said witness.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this 16th day of October, A. D. 1941.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

My Commission Expires January 24, 1945.

Statement of Notary Accompanying the Signature by Her of Within Deposition.

I, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, appointed by the United States District Court in and for the Eastern District of Oklahoma in the matter of the Bankruptcy of Leonard J. Woodruff, bankrupt, No. 7623, bankruptcy, to preside, and who presided, at the taking of the within deposition, do hereby certify that the transcription of the within deposition of the witness M. E. Heiser was completed and in the possession of the undersigned and available to said witness for examination by the 3rd day of September, 1941; that at all of the times herein referred to said witness resided, and resides, at #506—47th Avenue, San Francisco, California, and at all of said times had, and has, a telephone, designated Bayview 8319, installed in his said home; that between the 3rd day of September, 1941, and the 10th day of September, 1941, frequent telephone inquiries to the home of said witness evoked the response

that the witness was absent from the City and that the time of his return was unknown; that said inquiries were for the purpose of ascertaining when said witness would examine his deposition to make such changes in form or substance that he might desire and to thereafter sign the same; that on the 10th day of September, 1941, Oscar Samuels, attorney at law, of San Francisco, California, who represented Messrs. Champion and Fischl in the taking of said depositions, mailed to Leonard J. Meyberg, Esq., attorney at law, of Los Angeles, California, who represented said witness on the taking of his deposition, a letter, a true copy of which is attached hereto; that in response thereto said Oscar Samuels received a letter dated September 15, 1941, from said Meyberg, which is also attached hereto; that under date of September 16, 1941, said Samuels replied to said last mentioned letter of said Meyberg, a true copy of which reply is attached hereto; that the undersigned is informed by said Samuels, and states it to be a fact, that he received no reply to said last mentioned letter and has heard nothing further from him; that under date of September 20, 1941, the undersigned, by registered mail, sent a letter to said Meyberg and to said Heiser, a true copy of which is attached hereto; that the return registration receipts for said letter are also attached hereto; that the reply dated September 23, 1941, of said Meyberg is attached hereto; that it appears from said last referred to letter that said witness was to have been in Los Angeles before the end of the week in which said letter was written; that in response to said last mentioned letter the undersigned, under date of September 25, 1941, wrote to said Meyberg, a true copy of which response is attached hereto; that the undersigned has heard nothing further from said Meyberg, notwithstanding that under date of October 7, 1941, the undersigned addressed and mailed a letter to said Meyberg, a true copy of which is attached hereto; that the undersigned has this day telephoned to the said home of the said witness and was advised by the person answering the telephone, identifying herself as the wife of said witness, that he was not in San Francisco, that his time of return was uncertain and unknown to her, that he had been in Los Angeles some several weeks ago and that she did not know whether he was there presently; that the undersigned believes that said Heiser is deliber-

ately evading signing said deposition and that further effort on her part to accomplish the same will be futile, and that the undersigned, as the authorized officer presiding at said deposition, has signed said deposition because of the absence of said witness from the City and County of San Francisco and for his refusal to sign the same.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco appointed to preside at the taking of the deposition of said witness.

My Commission Expires January 24, 1945.

September 10, 1941

Leonard J. Meyberg, Esq.
Attorney at Law
Lane Mortgage Building Los Angeles, California

Re: Leonard J. Woodruff, a bankrupt

My dear Mr. Meyberg: As you doubtless know through the receipt of a copy thereof, the deposition of M. E. Heiser in the above matter has been transcribed and has been ready for the last several days for submission to him for examination changes, if any he may desire to make and for subscription. Inquiry at his home has evoked the response that he is in the East and that the time of his return is unknown. Under Rule 30, subsection (e) of the Federal Rules of Civil Procedure it would appear that the Notary may, in light of the foregoing, dispense with such submission to, and subscription by, the witness.

My purpose in writing to you is, before advising the Notary on this feature, to ascertain whether you have communicated with Mr. Heiser regarding his examination of, and signature to, his deposition or, if not, whether you can inform me of his reasonably certain time of return to this City or whether you are content that his deposition should be returned to Court in its present form, unsubscribed by him.

May I hear from you with the least loss of time.

Very truly yours,

OS:CH OSCAR SAMUELS

Law Offices

Leonard J. Meyberg

Fourth Floor Lane Mortgage Building
Eighth and Spring Streets Los Angeles

September 15, 1941

Mr. Oscar Samuels, 333 Montgomery Street, San Francisco, California.

Sir: We have not as yet received a copy of the deposition of Mr. M. E. Heiser, though, as arranged with Mr. Hart, we remitted to him in full upon receipt of his bill. Why it is not forthcoming we do not know.

We have received word from Mr. Heiser that he is on one of his usual business trips, which he expects to bring him into Los Angeles in the next few days. If you will direct that the transcript containing his deposition be sent to me we will arrange to have it signed by Mr. Heiser before a notary here; or if we find it cannot be within a reasonable time we will endeavor to arrange to have it returned to you with a stipulation that it may be used without his signature.

Having in mind that Mr. Heiser was interrupted so many times in giving his answers, and that the matter about which you interrogated him ran back for the most part between twenty and twenty-five years ago, I would think it would be more appropriate, in order to have the records speak the fact, to have it examined by Mr. Heiser.

Respectfully yours,

LJM:S LEONARD J. MEYBERG S.

September 16, 1941

Leonard J. Meyberg, Esq., Attorney at Law, Lane Mortgage Building, Eighth and Spring Streets, Los Angeles, California.

Dear Sir: I am just in receipt of yours of the 15th instant relative to the subscription by Mr. Heiser of his deposition.

I have telephoned to Mr. Hart and have been informed by him that your copy of the deposition is available to you, if not already received by you. If that be true, it would appear to me that it would be the more practicable course for Mr. Heiser, who you state will be in your City within a few days following the time of your writing, to examine it, determine upon the changes, if any, he desires to make, list those changes for his own convenience and then to come to this City and have the changes and the reasons therefor noted upon the original by the officer appointed to preside at the taking of the deposition. If there be no changes, of course, a stipulation may be entered into that subscription may be foregone. I am apprehensive of the legal effect of deviating from the provisions of the Statute and, in particular, to the extent of having Mr. Heiser sign before a Notary whose jurisdiction does not extend to the place of taking the deposition and who is other than the Court appointee.

Kindly advise me whether your copy of the deposition is not now in your possession or immediately procurable by you from the postoffice and whether the foregoing suggestion meets with your approval.

Very truly yours,

OS:CH OSCAR SAMUELS

Helen V. Flanagan
Notary Public
333 Montgomery Street San Francisco, Calif.

September 20, 1941

Mr. M. E. Heiser, 506—47th Avenue, San Francisco, California.

Dear Sir: Kindly be advised that unless you communi-

cate with the undersigned, at her office, Room 1800, 333 Montgomery Street, San Francisco, California, by Thursday, the 25th instant, with respect to the examination of your deposition taken in the matter of the bankruptcy of Leonard J. Woodruff, bankrupt, which matter is pending in the United States District Court in and for the Eastern District of Oklahoma, to permit of your making such changes therein as you may determine upon and to thereafter subscribe the same, or advise the undersigned of your intention at a specified time to appear at the undersigned's said office for said purpose, the undersigned, as the officer appointed by said Court to preside at the taking of said deposition, will sign said deposition and transmit the same to the Clerk of said Court for filing in said matter.

Very truly yours,

HELEN V. FLANAGAN, Notary Public appointed by said Court to preside at the taking of said deposition.

Registered Mail

cc: Leonard J. Meyberg, Lane Mortgage Bldg., Los Angeles, Calif.

Law Offices

Leonard J. Meyberg

Fourth Floor Lane Mortgage Building
Eighth and Spring Streets Los Angeles

September 23, 1941

Miss Helen *Flannagan*, Room 1800, 333 Montgomery Street, San Francisco, California.

Dear Madam: In response to a copy of your letter addressed to Mr. Heiser under date of September 20, asking that Mr. Heiser communicate with you by Thursday, September 25, with respect to the examination of his deposition taken in the matter of Leonard Woodruff, bankrupt, etc., be advised that Mr. Heiser, as we informed Mr. Samuels, is on one of his regular sales trips and has been expected in Los Angeles for several days. I understand that he will be here before the end of this week.

I wrote to Mr. Samuels suggesting that he send the original deposition here so that we could have Mr. Heiser go over it upon his arrival, and we could stipulate for its signing here before a notary, or we could have him take it back to San Francisco at his earliest convenience with notations of his corrections, if any, and arrange a time with you for its signing, etc.

Inasmuch as this deposition involved some 350 pages, more or less, and took several days, all day, with considerable argument engaged in by Mr. Samuels with the witness, which no doubt materially affected the stenographic report, it would seem to me that the witness should be afforded every opportunity to make a full and complete examination of the transcript to the end that it may go back as a correct report of the proceedings had.

I shall report to you as soon as I hear from Mr. Heiser, as to just when he will be here, and I am quite confident that we can make satisfactory arrangements for signing and proper *proceedure* as may be best in the premises for the convenience of all concerned. It is unfortunate that neither Mr. Samuels nor the reporter nor you arranged for any time when the deposition would be completed and when the witness could go in to proceed with it. The deposition was closed without this being done by any of them. The witness being required to proceed in his business to go out of town and having heard nothing from you in the meantime, it would seem to me that the matter should be worked out to the best interests of all concerned, with the least inconvenience to any.

Please let me hear from you.

Respectfully yours,

LJM:S LEONARD J. MEYBERG S.

Objector's EXHIBIT 1

Frank L. Hart

Official [illegible]

Exhibit #1 to the deposition of Heiser

FOREIGN GOVERNMENTS

ARGENTINA

Avenue D, bet. 5th and 6th Sts.

GROUP 152

WORKING OF MINES, ORE BEDS AND STONE QUARRIES

Compania Argentina de Perforaciones, Buenos Aires. Methods of boring.

Compania Especial de Perforaciones, Buenos Aires. Oil field methods, Comodoro Rivadavia.

General Direction of Exploitation of Comodoro Rivadavia's Petroleum Department of Agriculture. Petroleum methods and equipment.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Mining, survey and boring methods.

GROUP 153

MINERALS AND STONES, AND THEIR UTILIZATION

Andrade, Carlos M., Buenos Aires. Mica in sheets from the Cordoba Sierra.

Aust, Alfonso, Buenos Aires. Limestone from Olavarria.

Barta, Leopoldo, C. E., Comodoro Rivadavia. Distilling and refining petroleum products.

Brach, Eduardo, Buenos Aires. Mica in sheets from San Luis Sierra.

Cerrano y Cia, Buenos Aires. Lime factory. Lime.

Chaillon y Cia, Buenos Aires. Onyx from San Rafael, State of Mendoza.

Compania Productos Conen, Sociedad Anonima, Buenos Aires. Boracic acid; ulexite prod.

Compania Salinas Grandes, Buenos Aires. Salt from Salinas Grandes.

Coral y Aramburu, Buenos Aires. Gypsum, crude and refined from Rio Negro.

Darmstaedter, Luis, Buenos Aires. Ore from San Juan mine, Sierra of Famatina.

Defillippi, Luis, Buenos Aires. Lime.

General Direction of Exploitation of Comodoro Rivadavia's Petroleum-Department of Agriculture. Petroleum.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Collection of minerals.

Graciarena, Bernardo, Buenos Aires. Salt and graphic material.

Laclau & Cia, Buenos Aires. Granites and mylonites from Cerro Negro, Olavarria.

Mesquita, Salvador, Buenos Aires. Casterite and minerals of tin mines, Catamarca State.

Quiroga, German, San Luis. Marbles from Sierra of San Luis.

Reale, Domingo G., Buenos Aires. Marbles from Cordoba and San Luis Sierras.

Sociedad Anonima "Minas de Guandacol," Chilecito. Minerals.

State of San Luis. Onyx marble.

Sterki, Alejandro, Santa Elena. Gypsum, crude and labored.

Termas "Rosario de la Frontera," Sociedad Anonima, Salta. Mineral waters.

Territory of Los Andes. Gold, silver, copper, borates and other minerals.

Zambrano, Ing. Pedro, Buenos Aires. Gold ore.

GROUP 154

MINE, METALLURGICAL AND OIL MODELS, MAPS, PHOTOGRAPHS

Aust, Alfonso, Buenos Aires. Photos.

Defillippi, Luis, Buenos Aires. Photos.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Photos of surveys and mineral operations.

Schweitzer, Pablo, Buenos Aires. Maps.

GROUP 156

LITERATURE OF MINING AND METALLURGY

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Statistics and publications.

AUSTRALIA

Location: Australian Pavilion.

Presidio Entrance, Opposite French Pavilion.

GROUP 153

MINERALS AND STONES, AND THEIR UTILIZATION

Adelong—New South Wales. Auriferous quartz.

Abermain Colliery Co., Ltd—New South Wales. Section of coal seam worked.

Back Creek—Near Rockley, New South Wales. Black oxide of manganese.

Ballina—New South Wales. Platinum.

Bambrick, H.—Sapphiretown, Queensland. Cut sapphires.

Bambrick, V.—Sapphiretown, Queensland. Sapphires, cut and rough.

Barrier Mine, The—Wyalong, New South Wales. Auriferous pyritous quartz.

Battery Mount—New South Wales. Lode tin ore.

Black & White Tin Mine—Ardlethan, New South Wales. Tin ore in greisen.

Block 14 Mine—Torrington, New South Wales. Wolfram-bearing quartz-topaz rock.

Bow Creek Molybdenite Mines—Deepwater, N. S. Wales. Molybdenite ores.

British Broken Hill Proprietary Co.—N. S. Wales. Sulphide ore, lead & zinc concs.

Broadbent, R.—Broken Hill, N. S. Wales. Silver, lead, zinc minerals, collection.

Broken Hill Proprietary Co. Block 10—N. S. Wales. Sulphide ore.

Objector's EXHIBIT 1

Frank L. Hart
Official Shorthand Reporter

Exhibit #1 to the deposition of Heiser

Broken Hill Proprietary, Block 14—N. S. Wales. Sulphide ore.

Broken Hill Proprietary Co., Ltd.—N. S. W. Silver-lead-zinc ores, concs., spelter, etc.

Broken Hill South Silver Mg. Co.—N. S. W. Sulphide ore, lead & zinc concentrates.

Brookburn Coal & Shale Co.—Greta, N. S. W. Section of coal seam worked.

Burford, R.—Sapphiretown, Queensland. Cut sapphires.

Burraga Copper Mine—Burraga, N. S. Wales. Copper ores.

Butler's Tin Mining Co.—Torrington, N. S. W. Lode tin ore, tin oxide, slimes & fines.

C. S. A. Mine—Cobar, N. S. W. Copper ores, carbonate and sulphide ores.

Cadia Copper Mining Co.—Cadia, N. S. W. Copper ores.

Carpathia Tin Mining Co.—Ardlethan, N. S. W. Lode tin ore.

Christmas Gift Extended Gold Mg. Co.—Cullinga, N. S. W. Sulphide ore.

Chesney Copper Mine—Cobar, N. S. W. Copper ores.

Chick, C. W.—Sapphiretown, Queensland. Cut sapphires.

Cobar Gold Mines, Ltd.—Cobar, N. S. W. Pyritous ore & altered slate.

Cobar Copper, Ltd.—Wrightville, N. S. W. Copper ores.

Colen Peaks Mining Co.—Yerranderie, N. S. W. Native silver & oxidised, etc., ores.

Cope's Creek Central Tin Dredging Co.—Skeleton Creek, N. S. W. Stanniferous dirt.

Commonwealth Oil Corp. Co., Ltd., The—Sidney, N. S. W. Kerosene shale.

Commonwealth Portland Cement Co., The—Portland, N. S. W. Cement, limestone, etc.

Corner Block—Bygoo, Ardlethan, N. S. W. Tin ore in granite.

Corrimal-Balgownie Colliery Co.—N. S. W. Section of coal seam worked.

Cousen, I. G.—Sapphiretown, Queensland. Sapphires, cut and rough.

Crudoon (E. Dawson)—N. S. W. Siliceous sulphide ore. Copper ores.

Cunningar Mine—Near Harden, N. S. W. Auriferous quartz.

Currajong Mine—Wyalong, N. S. W. Auriferous quartz.

Daysprings Mine—Parkes, N. S. W. Auriferous quartz with iron & arsenical pyrites.

Department of Mines—Melbourne, Victoria. Models of gold nuggets found in Victoria.

Department of Mines—Brisbane, Queensland. Antimonite, limestone, copper ores, coal, chromite, pottery & fire clay, coke, gold ores, graphite, iron ores, magnesite, manganese ore, molybdenite, wolfram, tin ores & tin ingots, silver-lead-zinc ores, bismuth ores.

Department of Mines—Melbourne, Victoria. Victorian marbles, polished & mounted.

Department of Mines—Sidney, New South Wales. Collection of ornamental & building stones; collection of minerals & economic ores.

Department of Mines—Sydney, N. S. W. Model of the Broken Hill lode.

Dinmore Mines, Ltd.—Hillgrove, N. S. W. Antimonial gold ore & antimonite.

Electrolytic Refining & Smelting Co. of Australia—Port Kembla, N. S. W. Copper.

Emerson, D.—Rubyvale, Queensland. Cut sapphires.

Euriowie—Barrier Range, N. S. W. Lode tin ore.

Fifield, Henry and Ward—N. S. W. Magnesite.

Fraser's, Ltd.—Brisbane, Queensland. Opals and assorted gem stones.

Gibraltar Cons. Mines, The—Sheppardstown, Adelong, N. S. W. Hornblende granite.

Gladstone Mining Co.—Cobar, N. S. W. Copper ores.

Golden Fleece Mine—Wyalong, N. S. W. Auriferous quartz.

Golden Hill Lease (E. Dawson)—Crudoon, N. S. W. Pyritous quartz.

Gordon Brook—N. S. W. Chromite.

Grafton Copper Mining Co.—Cangai Mine, N. S. W. Copper ores.

Great Britain Sluicing Co.—Emmaville, N. S. W. Stanniferous wash dirt.

Great Cobar Mine—Cobar, N. S. W. Copper ores.

Great Cobar North Mine—N. S. W. Copper ores.

Great Northern Amalgamated Molybdenite Mg. Co.—Beerolong, N. S. W. Molybdenite.

Gulgong (L. Hasenkam)—N. S. W. Pyritous quartz.

Gulgong (C. E. Hilton)—Red Hill, N. S. W. Pyritous quartz.

Gundle Tin Mine—N. S. W. Lode tin ore.

Hart's Tin Mining Co.—Torrington, N. S. W. Lode tin ore.

Hillgrove, T. Snow—N. S. W. Dressed scheelite.

Holland, A.—Rubyvale, Queensland. Cut sapphires.

Holland, T.—Sapphiretown, Queensland. Sapphires, cut & rough.

Holland, W.—Sapphiretown, Queensland. Sapphires, cut & rough.

Homeward Bound Tin Mining Syndicate—Ardlethan, N. S. W. Lode & concentrated tin ore.

Hoskins Brothers, Eskbank Ironworks—Lithgow, N. S. W. Iron ores, limestone, etc.

Iron Duke Mine—Cadia, N. S. W. Hematite, limonite and magnesite.

Junction North Broken Hill Mine—N. S. W. Silver-lead-zinc ores.

Junction Reefs, Sheehan's Mine—N. S. W. Auriferous pyritous ore.

Junction Reefs, Lyndhurst Ry. & Mines, Ltd.—N. S. W. Auriferous pyritous ore.

Lone Hand Mine—Bygoo, Kamarah, N. S. W. Lode tin ore.

Major's Creek—N. S. W. Auriferous pyritous quartz.

Marks, Percy—Sydney, N. S. W. Opals, rare black & light harlequin, cut & rough; precious & semi-precious gems; gold.

McIntyre, O., & Flynn, E.—Rubyvale, Queensland. Cut sapphires.

Metropolitan Coal Co.—Helensburgh, N. S. W. Section of coal seam worked.

Mote—Hillgrove, N. S. W. Antimonite.

Mitchell's Creek—N. S. W. Auriferous pyritous quartz.

Mole Tableland—N. S. W. Tinstone in granite.

Objector's EXHIBIT 1

Frank L. Hart
Official Shorthand Reporter

Exhibit #1 to the deposition of Heiser

Moran, W.—Sapphiretown, Queensland. Cut sapphires.

Mount Boppy Gold Mining Co.—N. S. W. Oxidized & siliceous sulphide ore.

Mount Jasper Copper Mine—Yarras, N. S. W. Copper ores.

Mount Keira Colliery—N. S. W. Section of coal seam worked.

Mount Pleasant Coal & Iron Mg. Co.—N. S. W. Section of coal seam worked.

Newcastle Coal Mining Co.—Merewether, N. S. W. Section of coal seam worked in A pit.

New Burragorang Silver Mining Co.—N. S. W. Sulphide ore (galena, fahlore, etc.).

Newsome, L.—Sapphiretown, Queensland. Sapphires, cut & rough.

Nisbet, J. S.—Sapphiretown, Queensland. Sapphires, cut & rough.

North Broken Hill, Ltd.—N. S. W. Silver-lead-zinc ores.

North Bulli Colliery Co.—N. S. W. Coke; section of coal seam worked.

Nundle—N. S. W. Chromite.

Occidental Gold Mining Co.—Cobar, N. S. W. Siliceous sulphide ore.

Ottery Tin Lodes—Tent Hill, N. S. W. Lode tin ore.

P. D. Copper Mining Co.—Grafton, N. S. W. Copper ores.

Pambula—N. S. W. Auriferous felsite.

Peak Hill Mine—Peak Hill, N. S. W. Auriferous lodestuff.

Perseverance Mine—Adelong, N. S. W. Auriferous pyritous quartz.

Peterson, J.—Sapphiretown, Queensland. Cut sapphires.

Petrie & Party—Tenterfield, N. S. W. Wolfram, molybdenite in quartz & granite.

Phoenix Mine—Parkes, N. S. W. Auriferous quartz.

Potter's Silver Mine—Condobolin, N. S. W. Sulphide ores.

Pulganbar Quicksilver & Copper Mining Co.—Grafton, N. S. W. Cinnabar & mercury.

Red Cross Lode—Emmaville, N. S. W. Lode tin ore.

Roberts & Heiss—Tenterfield, N. S. W. Molybdenite in quartz, etc.

Sheppard, D.—Sapphiretown, Queensland. Cut sapphires.

Sulphide Corporation, Ltd. (Central Mine)—Broken Hill, N. S. W. Sulphide ore.

Sydney Tin Smelting Co.—N. S. W. Tin ore, tin ingots, ribbon tin & grain tin.

Technological Museum—Sydney, N. S. W. Ornamental & building stones, collection.

Timbarra—N. S. W. Auriferous granite.

Tinto Mine—Cobar, N. S. W. Copper ores.

Tow's Lewis Ponds Mine—Orange, N. S. W. Massive iron pyrites.

Torrington Lode—Torrington, N. S. W. Lode tin ore.

True Blue Mine—Wyalong, N. S. W. Auriferous pyritous quartz & impregnated granite.

Umberumberka—Barrier Range, N. S. W. Massive sulphide ore.

Various Localities—N. S. W. Specimens of alluvial and reef gold.

Vegetable Creek Tin Mining Co.—Emmaville, N. S. W. Tin oxide & stanniferous wash dirt.

Webb's Mine—Emmaville, N. S. W. Sulphide ore.

Wheal Australia—County Gough, N. S. W. Lode tin ore.

Whipstick Mines, Ltd., The—Near Wyndham, N. S. W. Molybdenite in granite.

White Crystal Tin Mining Co.—Ardlethan, N. S. W. Granite with cassiterite.

White Rock—Drake, N. S. W. Sulphide ore.

Willi Willi Copper & Silver Mine—Macleay River, N. S. W. Copper ores.

Works Department—Brisbane, Queensland. Building stone, sandstone and granite.

Zinc Corporation (South Blocks Mine)—Broken Hill, N. S. W. Silver-lead-zinc ores.

GROUP 155

METALLURGY

Bow Creek Molybdenite Mines—Deepwater, N. S. W. Concentration molybdenite ores.

British Broken Hill Proprietary Co.—N. S. W. Lead & zinc concentrates.

Broken Hill Proprietary Co., Ltd.—N. S. W. Concentrates, spelter, antimonial lead, etc.

Department of Mines—Brisbane, Queensland. Blister copper & copper ingots.

Hoskins Brothers Ironworks—Eskbank, N. S. W. Coke, pig-iron, angle-iron, etc.

Sydney Tin Smelting Co.—N. S. W. Tin ingots, ribbon tin & grain tin.

Zinc Corporation (South Blocks Mine)—Broken Hill, N. S. W. Lead & zinc concentrates.

GROUP 156

LITERATURE OF MINING AND METALLURGY

Department of Mines—Sydney, N. S. W. Publications of Geo. Survey, of N. S. W.

BOLIVIA

Location: Mines Palace, Av. D, bet. 4th & 5th Sts.

GROUP 153

MINERALS AND STONES, AND THEIR UTILIZATION

Abelli & Cia, Avicaya. Tin ores.

Bolivia, Potosi. Silver ores, ruby, silver, blende.

Bolivia Tin Mines, Ltd., Vilaque. Tin ores.

Calbimonte, J. P., Potosi. Tin ores.

Chojnacota. Tin ores.

Cia. General de Minas en Bolivia, La Paz. Tin ores.

Compania Colquechaca Aullagas de. Tin and silver ores.

Compania Corcore de Bolivia, La Paz. Native copper and copper ores.

Compania Estanifera Colquiri, La Paz. Tin ores.

Compania Guadalupe de Bolivia, Portugalete. Silver ores, galena.

Compania Guernica, Potosi. Copper and silver ores.

Compania La Consolidada, Colquechaca. Tin and silver ores.

Compania Minera de Oruro, Oruro. Tin and silver ores.

Compania San Jose de Oruro, Oruro. Tin and silver ores.

Objector's Exhibit 2.

August 26, 1941.

Leonard J. Meyberg, Esq.
Addressed

Dear Mr. Meyberg:

I am herewith conforming to your suggestion that I reduce to writing my request below appearing, made to you this morning while taking the deposition of M. E. Heiser upon the objections to the claim filed by him in the matter of the Bankruptcy of Leonard J. Woodruff pending in the United States District Court in and for the Eastern District of Oklahoma.

I request that you consent to the exhibition to me or to one of my office associates, by the Collector of Customs of the office in San Francisco, California, or other appropriate official employed at the branch Customs House in said City, or by the Commissioner of Customs, Washington, D. C., of the records of importations by or on behalf of said Heiser from Australia and entering through the Port of San Francisco and the payment of duties thereon for the years 1914-1928 inclusive.

Very truly yours,

OS: OSCAR SAMUELS.
LC

Exhibit #3 to the deposition of Heiser

Mrs H.J.Loller #2

to controle the Sapphires of Australia.

I sent the Lease of our big mine to Mrs Heiser last mail & it is on this Lease that I want to put the Dredge as there are verry large &fine S apphires to be Dredged there.

Would it be Possible for you to lend the Company $6.000 for 18 months, so that we could get started & you can be paid from the sale of stones from the mine, also from the sale of the stocks in this you are taking no chances, Because we have the dredge all ready to work also plenty of water.

Mr B.Schlessinger, of S.F. is to form the Company for us & I know that if he does & you lend a helping hand we will soon be going on a big way, so please do as you think best Partner, but I am anxious to start producing & that would be the means of selling a lot of stock,

I think that the Company should be formed large enough so that we could sell up to $150.000.00. Bonds, or stocks. But I must have 55% reserved for myself & associates of course you understand you are one of them.

I had a letter from Mrs Heiser She said how nice you have been to her, I certainly appreciate that, & some day hope to show you and here

How are you & all the family I hope well? I am fine all is O.K. here now thanks to you, its only a matter of working capitol & then we will be in easy street,

Trusting that you receive this O.K. & are well

I AM

YOUR TRULY

M.E.Heiser

[Objectors' exhibit 4, original bill of lading, August 9, 1928, is identical with the original bill of lading which appears as part of objectors' exhibit QQ, page 1117.]

[Objector's exhibit 5, receipt for delivered freight, August 16, 1928, Morrie Heisen to Pacific Electric Company, appears at page 683 as objectors' exhibit 2-1 to the deposition of Norman R. Dunn. The endorsement of the referee, which is a part of objectors' exhibit 5, appears as a part of objectors' exhibit QQ, page 1119.]

Objectors Exhibit 6.

Number 10 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

The preferred stock shall entitle the holders thereof to receive from the surplus or net profits of the corporation, when and as declared by the Board of Directors, cumulative dividends at the rate of eighty cents (80c) per share per annum, payable on such dates during the months of January and July of each year after issuance, as determined by the Board of Directors and before any dividends shall be paid or applied to the common stock.

In the event of the dissolution, liquidation or winding up of the corporation (whether voluntary or involuntary) the preferred stock shall entitle the holders thereof to receive the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon before any

assets shall be applied to the common stock but shall not thereafter participate in the assets of the corporation.

The preferred stock shall be subject to redemption in whole or in part at any time after five (5) years from the date of issuance thereof until ten (10) years from the date of issuance thereof upon payment to the holders thereof of the sum of Ten Dollars and Fifty Cents ($10.50) per share together with all dividends accumulated and unpaid thereon. After ten (10) years from the date of issue all preferred stock then issued and outstanding and unredeemed must be redeemed by the corporation by payment to the holders thereof of the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon. The directors shall have power to create and provide for such fund or funds as in their discretion shall be found necessary to provide for the redemption of the preferred stock as herein specified. The time and manner of redemption shall be as from time to time determined by the Board of Directors.

The preferred stock shall not be entitled to vote upon any questions affecting the management or affairs of the corporation nor shall the holders thereof be entitled to notice of stockholders' meetings except as otherwise provided by law, the exclusive voting right to be vested in the common stock; provided, however, that in the event the corporation shall fail to pay or declare dividends at the dividend rate upon the preferred stock, and such delinquency shall continue for a period of eighteen (18) months, then and in that event, the preferred stock in respect to which such delinquency occurs shall be entitled to the same voting rights as attach to the common stock and shall also be entitled to notice of stockholders' meetings. Upon payment, however, to the preferred stock of all dividends accumulated and unpaid thereon, or the setting aside of the funds for the payment thereof, the voting rights of the preferred stock shall again cease, and so on from time to time as such delinquencies may occur or be terminated.

Both preferred and common stock without nominal or par value may be issued by the corporation from time to time for such consideration as shall from time to time be determined by the Board of Directors.

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary

WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller

.....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

.....Attorney

to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 11 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary — WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maud James Loller.

.....Shares of Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 12 — 3000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares

Without Nominal or Par Value

150,000 Shares Preferred Stock — 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of Three Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Cer-

tificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Receive, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

Mrs. Lillian Heiser MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 13 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and

its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Action No. 238348.

Defendant's Exhibit No. 3 (5 certificates).

F. I. Thiebaut, Deputy Clerk.

Number 14 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Cer-

tificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August 1928

In Presence of
Mrs. Lillian Heiser MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Heiser Stock.

*Matter in italics appears in handwriting on original.

Objectors' Exhibit 7.

United States National Bank 16-18 12
N. E. Corner Eighth & Spring Streets
Los Angeles, Calif., Sept 21, 1928 No. 33

Pay to the order of M. E. Heiser or Morrie Heiser: $350.00
Three hundred fifty ..... Dollars

GOLDEN STATE GEM CO. OF NEV.
Pres WALTER CALVIN SMITH
Sec MORRIE HEISER

(Perforated bank stamp)—Paid 10-4-28.

On reverse:

Endorsed by Morrie Heiser.

Endorsed by E. W. Lobree.

Two bank stamps.

Objector's Exhibit 9

[illegible] OR INDIVIDUAL

[illegible] AMERICAN GEM MINING CO

TO THE U. S. NATIONAL BANK OF LOS ANGELES, CAL.

[illegible] OFFICIAL TITLE (IF ANY)

x [illegible]

[illegible] 8027 [illegible] Cal

TELEPHONE [illegible] 5715 INTRODUCED BY

DATE 7/21/28 BUSINESS Mfg.

[illegible]

Office of

TO THE U. S. NATIONAL BANK OF LOS ANGELES, CAL.

Above is the signature of

who is hereby authorized to sign and endorse checks, notes and drafts, and transact all business with your bank in name, as attorney

Date

Objector's Exhibit 8

DEPOSITED WITH

United States National Bank

OF LOS ANGELES, CAL.

9 July 1928

IN MAKING THIS DEPOSIT AND AT ALL TIMES IN DOING BUSINESS WITH THIS BANK THE DEPOSITOR SPECIFICALLY AGREES TO ALL OF THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE HEREOF

Australian American Gem Mining Co.

DEPOSITOR

PLEASE LIST LOCAL CHECKS BY NUMBER OF DRAWEE BANK OUT OF TOWN ITEMS BY NUMBER OR NAME OF CITY

		DOLLARS	CENTS
COM'L ACC'T	CURRENCY		
SPEC. SAVINGS	COIN	380	—
TERM NO.	CHECKS	750	—
		2075	—
		3205	—
TOTAL			

NEW ACCOUNT

[Objectors' exhibit 10, letter, October 18, 1928, Heiser to Smith & Barstow, is identical with objectors' exhibit 3 which appears at page 301.]

Objector's Exhibit 11.

Strand Palace Hotel, London, W. C. 2.

11th October, 1929.

Attention International Trading Company Paris.

Dear Jeff & Mr. Lequantrie,

I sincerely hope that you had a pleasant trip in California and have returned safely and ready for some real business.

Now I have some of the most prominent British people interested and they have under their option in British Guiana 140 miles concession to build a railway and two miles of country each side with all gold and diamond rights and timber. This timber is comprised of 50% greenheart, 25% moura and the remainder is pulping timbers. The first two mentioned are in very large quantities and some millions of sleepers per year can be taken by America which are required for railway ties. The greenheart is particularly *used* required for wharves and used extensively in the Panama Canal also in all classes of dock work and is very useful for many types of furniture. In general, it is a very useful and valuable timber.

In Germany there is a shortage of paper and consequently pulping timbers could be utilized for commercial purposes. There is abundance of waterfalls which can be harnessed for electrical power to run the railway, operate the mines and the whole of the timber industry, as the greatest falls in the world are located in the centre of this district and a permit can be had to enable you to take as much power as you may require.

This English Syndicate would be prepared to hand over the whole of the concession to an American or French formed Company for a consideration in fully paid up shares in that Company, providing everything was bona fide. Of

course a British railway in a British possession with the resources that this railway would tap should naturally have some of these prominent Britishers represented on the Board of the Company.

Mr. Beatrix

Now Jeff, Mr. Lequantrie / and Walker, if you are interested in this you have only got to say so and you are in the cellar with me and we can put our friends on the ground floor as I have already communicated with prominent New Yorkers and Detroit people who have expressed a desire to come in with me, and I thought perhaps it was only right that I should let you know what I was doing, in case you wanted to come upon the wagon with me.

Please let me know one way or the other, how you feel about this proposal. I can supply you with all Government data on the railway, timber, gold and diamonds. One years production alone of diamonds reach over one million pounds.

Your family I hope are all well, and that business is O.K. with you.

I am,

Yours faithfully,

M. E. HEISER

*Matter in italics appears in handwriting on original.

Objector's Exhibit 12.

Nov. 14, 1928.

My dear Maudie & Will:—

After many interviews in Paris with Lequentric Beatrix, and Jeff, Mr. Beatrix and Lequentric came to the conclusion that on account of the excessive incorporation taxes in Paris, it would be more *advantagious* to all concerned, if a corporation was formed in *Calif.* as the selling Corporation, and that corporation to contract with the Golden State Gem Co. of Los Angeles, for 20 years at our prices. Unfortunately Jeff had to leave for home before his associates had found what they thought the best solution to handle the rough gem trade in Europe, so a week after *Jeffs* departure, they finally decided this the best course to take, especially as

the Queensland Government are offering us their entire stocks, which means the control of Queensland gems and practically the whole of N.S.W. this is a very wonderful opportunity for Jeff, but I think it would mean his living in Paris until the selling organization was properly established in Europe.

Mr. Beatrix sold one parcel of seconds (30 ounces) for 35,000 *franks*, for which I allowed them 10%, this was done chiefly for them to try out the markets.

Jeff has Major Mallailie, Mr. Fickett whom I am sure will help and with your assistance he should be able to successfully form a company to get all the money he needs to successfully operate his sales organization in Paris.

As you are aware Maudie we have about 25,000 ounces of cheap industrial sapphire in N.Y. if you or Jeff need them for the formation of this corporation, you can have them, and it should enable you to control the selling corporation. These stones are in the Lincoln Vaults, 60 East 42nd St., N.Y. there is a small *acumulation* of rent on them, but no other *incumbrances*, so if you need them for the above purpose consider this paragraph a deed of gift.

You know Maudie how anxious I have been for years to get a European connection like you and Jeff have kindly put me in touch with, of *cause* it will take a man like Jeff to handle the *french* merchants, as he can speak their language, I can't.

I had to go to London to make arrangements about the rough sapphires belonging to the Queensland Gov. and I wrote full particulars about the gems to Mr. Beatrix and Lequentric, because they are offered to me at a greatly reduced price of what they cost.

Mr. Lobree was censuring me *about* opening a cutting plant in Europe, Maudie this is absurd as you must know.

I was very much worried about you going to the hospital but after hearing from Mrs. Benjamin that it was for gland treatment and did not think it was serious I was very much relieved, and sincerely hope you are home now enjoying the best there is in life.

Well Bill how are you and how is the Real Estate going I hope you closed on that big deal you were working on when I left.

The family are all having a lovely time, but think there is no place like Calif.

Trusting that you are well and hoping to see you soon, and that you were happy over the arrival of the new baby and that you will have much happiness from the *lettle* tot, also that Bill is a proud Grandfather; gee Bill I would love to see you running around about 3:30 a.m. in your little short shirt, nursing the baby.

That large light opal that I said we would give to your Jamie, well we did and then gave it to Mr. Beatrix to carve her figure in it in the *Ballon* dance, and she was *verry* pleased and gave us some of her photos, which I will show you on our return.

Will appreciate getting a cable from Jeff to let me know if he will form the corporation or not as I am under a very heavy expense here and just waiting to hear from him now.

I am cabling to you this week and telling you that the french agents want Jeff to form a company in America and contract with the Golden State Co. for twenty years, at our prices.

There is no doubt Maud and Will that the french markets control the sapphire markets for the world and with Jeff's connection there is not the slightest doubt that he can get the best business in Paris for these gems, and I feel the same as the frenchmen that it is better for all concerned, that the company be formed in America, Taxes and many other conditions prevail in France that make it almost impossible.

I would have written to you earlier on this matter but I did not, as it took several weeks before this final decision could be made. Now I sincerely hope Maudie that you can help Jeff to hurry things along, as Australian end are urgently requesting me to return to Australia, and the French merchants need large quantities of large best rough and I have not any more left.

Trusting that this letter finds you in the best of health and enjoying the best

I am

Very Sincerely

MORRIE HEISER

Objector's Exhibit 13.

Strand Palace Hotel, Strand, W.C.2. 9th October 1929.
M. Le Quentrix, International Trading Company, Paris.

Dear M. le Quentrix,

I note you have returned from California and if you don't mind I would be very pleased if you could return the Coal Report which I left with you at Mr. Beatrix's place.

Has Walker returned with you and when do you expect Jeff in from California?

I hope you had a very nice and pleasant time in California. When I was in Paris last I called upon Mr. Beatrix, but unfortunately he had been called out of Town for a few days, and I had some important business which called me back to London before his return.

With kind regards to all our Friends in Paris.

Yours sincerely,

M. E. HEISER.

Exhibit #14 to the deposition of Heiser

NAME GOLDEN STATE GEM COMPANY

UNITED STATES NATIONAL BANK OF LOS ANGELES

I hereby agree to abide by the By-Laws and Rules of the United States National Bank governing deposits and the withdrawals of same, and agree that checks or other orders drawn on my/our account shall be payable only at the office of the Bank where the account is opened.

SIGN HERE MR ✓ Golden State Gem Co

SIGN HERE MR Walter Calvin Smith

Business Address 726 - 28 San Pedro St. Tel. ME - 0318

Residence Address Tel.

Occupation Appellee's Exhibit 14 From Hart Reporter

Refers To

Introduced By Mr. Heiser - (Australian - Am Min. Co) Date Aug - 16/28

FORM 170 8 27 5M GIS. CARD JOINT. COMMERCIAL 9223 -

The undersigned hereby agree each with the other and the United States National Bank, of Los Angeles, California, that all sums heretofore or hereafter deposited by the undersigned, or either of them, or any other party, with said Bank, to the credit of the undersigned in this Commercial Account are and shall be owned by the undersigned jointly with full right of survivorship, and be subject to check or order or receipt of either, or the survivor of either, and payment thereof shall discharge said Bank from all liability to either, or to the heirs, administrators or assigns of either. Upon the death of either, said deposit shall be the absolute and exclusive property of the survivor, and thereupon be paid to the order of the said survivor. The undersigned also hereby authorize each respectively to endorse checks, drafts and other paper payable to either and deposit to the credit of said account. The undersigned also hereby authorize the Bank to waive presentation of Pass Book by either party. In the case of death of either, it is understood that no checks drawn against this account by the survivor, will be honored until evidence is furnished that the requirements of the Inheritance Tax Laws of the State have been complied with. This agreement shall not be changed or terminated except by written notice to said Bank.

SIGN HERE MR ✓ Golden State Gem Co

SIGN HERE MR Walter Calvin Smith

JOINT DEPOSITORS

United States National Bank of Los Angeles

DATE AUG 16 1928 BY

Exhibit #15 to the deposition of Heiser

DEPOSITED WITH

United States National Bank

OF LOS ANGELES, CAL.

AUG 16 1928 192

IN MAKING THIS DEPOSIT AND AT ALL TIMES IN DOING BUSINESS WITH THIS BANK THE DEPOSITOR SPECIFICALLY AGREES TO ALL OF THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE HEREOF

Golden State Gen Co

DEPOSITOR

By Hallis Calvin Smith

PLEASE LIST LOCAL CHECKS BY NUMBER OF DRAWEE BANK. OUT OF TOWN ITEMS BY NUMBER OR NAME OF CITY.

		DOLLARS	CENTS
COM'L ACC'T	CURRENCY	1240	=
SPEC. SAVINGS	COIN		
TERM No.	CHECKS	6783	=
		1200	=
		9223	-
	TOTAL		

NEW ACCOUNT

W. L. S.

Interrogatories to Be Submitted to D. B. Edward.

1. Interrogatory number one: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: David Barnett Edward, 61, of 16 Barton Court, Barton Canberra Australian Capital Territory, Australia, civil servant for 45 years.

D. B. Edward

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I was Executive Secretary to the Australian Government Commission at the Panama Pacific International Exposition, San Francisco in 1915. I attended the Australian Pavilion as executive officer of the Commission each day during the prescribed office hours.

D. B. Edward

3. Interrogatory Number Three: Please give the names, if you can, of others who represented either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales at said Exposition and particularly with reference to the mineral and gem exhibits.

Answer: The Australian Commissioner was the Hon. Alfred Deakin, former Prime Minister of Australia. The Commissioners representing the States of New South Wales and Queensland respectively were the Hon. Neil Neilsen and Mr. James Robertson. The mineral and gem exhibits from these States were under the direct supervision of Mr. Geo. J. Jones New South Wales and Mr. James Campbell Queens

land.* *C. W. D. who were sent by their respective Governments from Australia.*

D. B. EDWARD

4. Interrogatory Number Four: Are you acquainted with M. E. Heiser, also known as Morrie E. Heiser and also known as Maurice Emanuel Heiser? If you state that you are acquainted with a Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: The only occasion I met Mr. Heiser was at the Australian Pavilion in San Francisco and my only acquaintance with him was during the short period he occupied a bench in the Pavilion. I take him to be identical with M. E. Heiser or Morrie E. Heiser or Maurice Emanuel Heiser as there was no other person of that name whom I have met anywhere than in the Australian Pavilion.

D. B. EDWARD

5. Interrogatory Number Five: Will you please state whether or not you were acquainted with the exhibits of the Commonwealth of Australia and the governments of Queensland and New South Wales at the Panama-Pacific International Exposition? If you say you were acquainted with such exhibits, will you please state whether or not such governments exhibited at said Exposition sapphires, opals, zircons and other minerals and the extent of such exhibits at such Exposition, together with the building or buildings in which such exhibits were housed, if you recall?

Answer: I had a general acquaintance with the wide range of exhibits in the Australian Pavilion. Although the six Australian States were represented by various exhibits both primary and manufactured, the only exhibits of precious stones or gems including those mentioned in this interrogatory were sent by the Governments of New South Wales and Queensland. I cannot give any information as to the extent of such exhibit but the collection of gems and precious stones were sent as a collection for which the respective Governments assumed responsibility.

D. B. EDWARD

*Matter in italics appears in handwriting in ink on original.

6. Interrogatory Number Six: Will you please state whether or not Mr. M. E. Heiser had any connection with said Exposition as a representative of either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales?

Answer: No person of the name of Heiser I state most definitely had any official standing as a representative in the Australian Pavilion of either the Commonwealth Government of Australia or of any of the State Governments of Australia.

D. B. Edwards

7. Interrogatory Number Seven: Will you please state whether or not Mr. Heiser had an exhibit or display of his own at the Exposition and if so, the extent and size of the exhibit or display according to your best knowledge and recollection and the place where it was housed. Also the length of time the exhibit was maintained by Mr. Heiser and whether or not he maintained the same during the course of the entire Exposition?

Answer: To the best of my knowledge and belief no person of the name of Heiser or any other person had an individual exhibit or display at the Exposition.

D. B. Edwards

8. Interrogatory Number Eight: If you state that Mr. Heiser had an exhibit or display of his own at the Exposition and that the same was not maintained during the entire course thereof, will you please state, if you know, why the same was not maintained by Mr. Heiser until the Exposition closed?

Answer: Mr. Heiser was allowed to occupy a small bench in the Australian Pavilion to give an exhibition of cutting certain precious stones mainly rough opals, which to the best of my belief he brought at his own expense from Australia. No charge was made for this bench nor did the Australian Commission receive any payment from Mr. Heiser.

D. B. Edwards

9. Interrogatory Number Nine: If you state that Mr. Heiser had a display or exhibit at the Exposition, will you

please state the names of some of the others who had exhibits in the same building and at the same place as Mr. Heiser had his display or exhibit.

Answer: No person had an individual exhibit of any sort. All minerals and precious stones and all exhibits whatsoever in the Australian Pavilion were displayed as Government exhibits to bring the resources of Australia before the American public. It is true that certain precious stones were collected from individuals and firms by Governmental authorities in Australia but they were displayed in the Australian Pavilion as a Government collection.

D. B. EDWARD

10. Interrogatory Number Ten: If you state that either the Government of the Commonwealth of Australia or the governments of Queensland or New South Wales had either a mineral or gem exhibit at the Exposition, will you please state, if you know, who was in charge of the exhibits and the extent of the exhibits, if you know.

Answer: See answer to No. 3

D. B. EDWARD

11. Interrogatory Number Eleven: Will you please state any further knowledge or information which you may have with reference to Mr. Heiser's connection, if any, with the Exposition as a representative of your government or as an individual exhibitor?

Answer: See answer to No. 7. Most definitely Mr. Heiser had no official standing in the Australian Pavilion. The permission granted to him to occupy a small bench in the Pavilion was of short duration because it was found that Mr. Heiser had contravened the policy and directions of the Australian Commission that no articles of any kind were to be sold in the Australian Pavilion during the currency of the Exposition.

D. B. EDWARD

12. Interrogatory Number Twelve: Will you please state whether or not the governments of Queensland or New South Wales or the government of the Commonwealth of Australia shipped any sapphires, zircons or opals from Aus-

tralia to San Francisco, Which sapphires, zircons and opals were the property of M. E. Heiser and which were exhibited at said Exposition in 1915 by said governments or either of them?

Answer: Neither the Commonwealth Government of Australia nor the Governments of the States of New South Wales and Queensland shipped on Mr. Heiser's behalf any of the stones mentioned.

D. B. EDWARD

13. Interrogatory Number Thirteen: Will you please state, if you know, whether or not said M. E. Heiser had a commission either by letter or other government document to represent either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales, or either of them, at said Exposition?

Answer The answer is most definitely No.

D. B. EDWARD
(Signature of Witness)

Commonwealth of Australia Canberra, Australian Capital Territory, 5th February 1943.

I, Cyril Walter Davies of Canberra in the Australian Capital Territory Notary Public, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of D. B. Edward of Canberra, A. C. T., upon written interrogatories do hereby certify that in pursuance of such commission I caused the said D. B. Edward to appear before me and did then and there administer to him an oath, that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said D. B. Edward after having so been duly sworn did testify and did answer the interrogatories so propounded to him as set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly recorded by me and are the true and correct answers of said D. B. Edward thereto.

I further certify that I am not interested in any way in

the event of this action and I am not an attorney for [illegible] related to any of the parties connected therewith.

CYRIL W. DAVIES Notary Public Canberra,
(Seal) Australian Capital Territory Australia

Commonwealth of Australia State of New South Wales City of Sydney Consulate General of the United States of America ss.

I, the undersigned, Consul of the United States of America at Sydney, Australia, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the document hereto attached, i.e. Depositions by David B. Edward in the Matter of Leonard J. Woodruff, Bankrupt, in the United States District Court in and for the Eastern District of Oklahoma is the signature of Cyril Walter Davies a Notary Public in and for the State of New South Wales, of the Commonwealth of Australia, and that by virtue of said office he is empowered to:—

take acknowledgments of the execution of documents, and oaths for general purposes, under his official seal;

and that the seal accompanying said signature is the seal of said office.

Witness my hand and the seal of the Consulate General of the United States of America at Sydney, Australia, this eleventh day of February, 1943.

CHARLES H. DERRY, Consul of the
(Seal) United States of America.

(Cancelled American Foreign Service Fee Stamp.)

Service No. 164 Fee $2.00 — 12-8d. Item 31.

For the contents of the annexed document the Consulate General assumes no responsibility.

Filed Mar. 12, 1943. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Commission for the Taking of Depositions.

The United States of America To:

Any Commissioner for Taking Oaths and Affidavits in Queensland, Australia:

You are hereby authorized and commissioned to take the deposition upon attached written interrogatories of A. A. Staines, Esq., Brisbane, Queen-land, Australia.

You will propound the questions to said witness, after he is by you duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth and you will correctly record the answers of the witness to such questions. The witness shall subscribe the deposition in your presence. You will certify thereto and return the completed deposition to: Clerk U. S. District Court, Muskogee, Oklahoma, U. S. A.

You will attach to your certificate a certified or duly authenticated copy of your commission of appointment showing your authority to act as such Commissioner for the taking of Oaths and Affidavits.

Done at McAlester, in the Eastern District of Oklahoma, this the 3d day of September, 1942.

Geo. F. Clark,
Referee in Bankruptcy,
District Court of the United States of America, Eastern District of Oklahoma.

Clerk's Certificate.

I, John H. Pugh, do hereby certify that I am the duly and legally appointed, qualified and acting clerk of the United States District Court in and for the Eastern District of Oklahoma; that the above entitled cause was filed and is now pending in said court; that Geo. F. Clark is a duly qualified and acting referee in bankruptcy in and for said court and that the above entitled cause has been referred to and is pending before said Geo. F. Clark as such referee. I further certify that the signature of the said Geo. F. Clark

affixed to the attached and foregoing commission for the taking of depositions is the genuine signature of said Geo. F. Clark. I further certify that said referee in bankruptcy does not have a seal.

In witness whereof, I hereunto set my hand and official seal this the 11th day of September, 1942.

(Seal)

JOHN H. PUGH,
United States District Court
Clerk, Eastern District of Okla.

Interrogatories to Be Submitted to A. A. Staines

1. Interrogatory Number One: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: My name is Adolphus Arnold Staines; age 64 years; residence Liverpool Road, Clayfield, Brisbane, Queensland; occupation Under Secretary, Department of Mines of Queensland, which position I have held for approximately fourteen years.

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I had no connection whatever with the said Exposition.

3. Interrogatory Number Three: Will you please state whether or not you have in your possession or custody or under your control the records or files of the Department of Mines of the government of Queensland showing the extent of the exhibit of gems, if any, made by the government of Queensland at the Panama-Pacific International Exposition held in San Francisco in 1915 and if you have such records or files, will you please state from such records or files what it discloses with reference to the extent and value of this exhibit.

Answer: I have under my control the records of the Department of Mines of the Government of Queensland showing the extent of said exhibit made by the said Government at said Exposition and they disclose the following as the extent and value of this exhibit:—Approximately 100 ozs. of Sapphires, approximately 6 ozs. of Zircon, 1½ lbs. of Corundum, 32 Sapphires and 8 Zircons of unstated weights, the total value of the whole exhibit being approximately £1,000.

4. Interrogatory Number Four: If it is possible for you to do so, will you please have a copy of the file from which you have made reference attached to this deposition as an exhibit and so identified by the person taking your deposition.

Answer: Now produced and shown to me and marked with the letter "A" is a true copy of all the entries relating to items referred to in the answer to Interrogatory Number Three which said entries appear in a book compiled by William Woodyatt Alder who was then an officer of the Department of Mines of Queensland and who collected the gems and rough stones comprised in the said exhibit of gems prepared for display at the said Exposition.

5. Interrogatory Number Five: Are you acquainted personally or otherwise with M. E. Heiser, also known as Morrie E. Heiser, and also known as Maurice Emanuel Heiser? If so state that you are acquainted with Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: I am not acquainted personally or otherwise

with M. E. Heiser, Morrie E. Heiser or Maurice Emanuel Heiser.

6. Interrogatory Number Six: Will you please state what the files and records of the Department of Mines in your office show, if anything, with reference to the connection of Mr. Heiser with the Panama-Pacific International Exposition at San Francisco, California, United States of America, in 1915, either as an individual or as a representative of your government?

Answer: The files and records of the Department of Mines in my office do not disclose that the said Mr. Heiser had any connection with the said Exposition either as an individual or as a representative of the Government of Queensland.

7. Interrogatory Number Seven: If your records do not show that Mr. Heiser had any connection with the Exposition either personally or as a representative of your government and if you have any personal knowledge as to whether or not he had any such connection, will you please state what that knowledge or information is.

Answer: I have no personal knowledge as to whether or not Mr. Heiser had any connection with the said Exposition.

8. Interrogatory Number Eight: Will you please state any further knowledge or information which may be disclosed by your files or which you may have personally with reference to the extent of the exhibit of either the governments of Queensland or New South Wales at said Exposition and the connection, if any, of M. E. Heiser with said exhibit at said Exposition?

Answer: There is no further knowledge or information which is disclosed by the files of the Department of Mines of Queensland or which I have personally as to the connection, if any, of M. E. Heiser with said exhibit at said Exposition.

A. A. STAINES.
(Signature of Witness.)

Commonwealth of Australia,
.....
.....

I, Henry Gillies, of Brisbane in the State of Queensland, Australia, a commissioner of affidavits of the Supreme Court of Queensland, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of A. A. Staines of Brisbane, Queensland, Australia, upon written interrogatories do hereby certify that in pursuance of such commission I caused the said A. A. Staines to appear before me and did then and there administer to him an oath that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said A. A. Staines after having so been duly sworn did testify and did answer the interrogatories so propounded to him set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly recorded by me and are the true and correct answers of said A. A. Staines thereto.

I further certify that I am not interested in anywise in the event of this action and I am not an attorney for nor related to any of the parties connected therewith.

H. GILLIES.

I certify that I have not a seal. H. Gillies. 20 January, 1943.

A True Copy of All the Entries which appear in a Book forming part of the Records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland and who collected the gems and rough stones comprised in the exhibit of gems prepared for display by the Government of Queensland at the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915:—

Levi Newsome, Sapphiretown.

No.	Crs.	Colour	Gem	Minimum Value
	Cut Gems			
1	4¼1/32	Yellow	Sapphire	20. 0. 0
2	5½⅛1/32	"	"	25. 0. 0
3	4½	"	"	13. 0. 0
4	2½⅛	"	"	7. 0. 0
5	2¼1/32	"	"	5. 0. 0
6	2½¼1/16	Green	"	6. 0. 0
7	6-1/16	"	"	12. 0. 0
8	5	"	"	10. 0. 0
9	23½⅛	Yellow	" (Lady Denman)	240. 0. 0
10	5¾	"	Sapphire	21. 0. 0
11	2¾⅛	"	"	15. 0. 0
12	5½⅛	"	"	17. 0. 0
13	3½⅛	"	"	10. 0. 0
14	3	"	"	9. 0. 0
15	6¼⅛	Green	"	12. 0. 0
16	3½1/16	Orange Green	"	8. 0. 0
17	2¾⅛	" "	"	4. 0. 0
18	2	Yellow	"	6. 0. 0
19	3¾⅛	Parti-colour	"	6. 0. 0

(sgd.) LEVI NEWSOME.

Levi Newsome, Sapphiretown.

Rough Stones

No.	Crs.	Colour	Gem	Minimum Value
1	123½	Green	Sapphires	62. 0. 0
2	89½	"	"	45. 0. 0
3	59¼⅛	"	"	30. 0. 0
4	50¼⅛	"	"	25. 0. 0
5	41½¼	"	"	20. 0. 0
6	34½¼⅛	"	"	17. 0. 0
7	33½¼	"	"	16. 0. 0
8	27½⅛	"	"	14. 0. 0
9	31¼	"	"	15. 0. 0
10	26½⅛	"	"	13. 0. 0
11	6 ozs.		Zircons	3. 0. 0
12	5 ozs.		Machine Stones	1.10. 0

(sgd.) LEVI NEWSOME.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the First Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES.
Deponent.

H. GILLIES, Commissioner for Affidavits.

J. S. Nisbet, Sapphiretown.

	Minimum Value
34 Green Sapphires (Cut) (To be sold in one lot only)	£12. 0. 0

(sgd.) J. STEWART NISBET.

Small parcel of small corundum (under ½ lb.)
Buyers could be supplied @ 2 — per lb.

V. Bambrick—Sapphiretown.

	Minimum Value
One Sapphire, (Yellow—Cut) Said to weigh 7½ carats	£25. 0. 0

(sgd.) V. BAMBRICK.

J. G. Cousen—Sapphiretown.

	Minimum Value
(1) One Green Sapphire (Cut) Said to contain 9 carats	£10. 0. 0
(2) 4 ozs. 6 dwts. Blue Sapphires (Rough) @ £2 per oz.	£8.12. 0
(3) 12 ozs. Small Blue Sapphires (Rough) @ 10/—per oz.	£6. 0. 0
(4) 10 ozs. Sapphires (Machine Stones) for Mechanical purposes) @ 5/— per oz.	£2.10. 0

Wm. Holland—Sapphiretown.

	Minimum Price
(1) Red Zircon (Said to contain 7 carats)	£4. 0. 0
(2) Green Sapphire (said to contain 7½ carats)	£10. 6. 0

(sgd.) J. STEWART NISBET.

Wm. Moran—Sapphiretown.

	Minimum Price
(1) One oz. Blue Sapphires (Rough) @ £2 per oz.	£2. 0. 0
(2) One oz. Small Blue Sapphires (Rough)	12. 0
(3) 2¼ ozs. Machine Stones @ 6/—p. oz.	6. 0
	13. 6

(sgd.) WILLIAM MORAN.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the Second Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December, 1914 and January 1915 by William

Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. Stainis, Deponent.

H. Gillies, Commissioner for Affidavits.

E. Burford—Sapphiretown.

	Minimum Value
(1) 5 ozs. Blue Sapphires (Rough) @ 1/15/— per oz.	£8.15. 0
(2) 6 Blue Sapphires (Cut)—About 9 carats. @ 12/6 per carat	5:12. 6

(sgd.) E. Burford.

Horace Bambrick—Sapphiretown.

	Minimum Value
One large Green Sapphire (Rough)	£8. 0. 0

(sgd.) E. Burford.

David Shephard—Sapphiretown.

	Minimum Value
(1) Large Green Sapphire (Cut). Said to contain 5½ carats	£3. 0. 0
(2) Alexanderite (Cut)	£1.10. 0
(3) One Blue & 2 Yellow Sapphires (Cut). (Set of 3 stones)	£2. 0. 0
(4) Six Fancy Sapphires (Cut) (Said to contain 8¼ carats @ £1 each.	£6. 0. 0
(5) One Large Zircon (Rough)	£5. 0. 0

(sgd.) D. Shephard.

A. A. Holland—Rubyvale.

5 ozs. Blue Sapphires (Rough) @ £3 per oz.	£15. 0. 0

(sgd.) A. A. Holland.

David Emonson, Rubyvale.

	Minimum Value
Parcel of Rough Blue Sapphires containing 5 ozs. @ £3 per oz.	£15. 0. 0

(sgd.) DAVID EMONSON.

Owen McIntyre, Norah A. Flynn, Rubyvale

	Minimum Value
Parcel of Rough Blue Sapphires containing 9 ozs. @ £3 p. oz.	£27. 0. 0

(sgd.) D. EMONSON for McIntyre and Flynn

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the Third Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES, Deponent.

H. GILLIES, Commissioner for Affidavits.

G. W. S. Roche—Rubyvale.

	Minimum Value
5 pieces Corundum	
(1 piece 6 ozs. @ 12 —p.oz.	£3.12. 0
(4 pieces each over 1 oz. @ 8 —p.oz.	2.12. 0
Totall weight 12½ ozs.	

This parcel is forwarded, not necessarily for sale, but prin

cipally to ascertain if any buyer requires the stone in quantity and at what price prepared to pay.

(sgd.) G. W. S. ROCHE.

C. W. Chick—Sapphiretown.

	Minimum Value
(1) Parcel of Rough Blue Sapphires Said to contain 5 ozs. @ £3 per oz	£15. 0. 0
(2) Parcel of Rough Blue Sapphires (Small stones). Said to contain 3 ozs.—@ 12s/—d.p.oz.	£1.16. 0
(3) Parcel of Machine Stones said to contain 5 ozs. @ 7/— per oz.	£1.15. 0

(sgd.) C. W. CHICK.

Thomas Holland, Sapphiretown.

Parcel of Rough Blue Sapphires said to contain 5 ozs. @ £3 per oz.	£15. 0. 0

(sgd.) J. STEWART NISBET.

James Peterson, Sapphiretown.

(1) 3 Green Sapphires (Cut)	£2. 0. 0
(2) 1 Large Blue " "	4. 0. 0
(3) 3 Light Blue " "	7. 0. 0
(4) 3 Yellow " "	12.10. 0
(5) 3 Parti-colour " "	10. 0. 0
(6) 3 Yellow " "	12.10. 0
(7) 3 Green " "	4.10. 0
(8) 3 Large Blue " "	9. 0. 0
(9) 3 Parti-colour " "	6.10. 0
(10) 1 Large " "	5. 0. 0
(11) 8 Zircons "	13. 0. 0
	£86. 0. 0

Received by post from Mr. J. S. Nisbet.

(init.) W. A.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the fourth and last sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES, Deponent.

H. GILLIES, Commissioner for Affidavits.

Commonwealth of Australia, State of Queensland, City of Brisbane, Consulate of the United States of America, ss:

I, Joseph P. Ragland, Consul of the United States of America at Brisbane, in the State of Queensland, Commonwealth of Australia, duly commissioned and qualified, do hereby certify that Henry Gillies, whose true signature is affixed to each page of the attached interrogatories and exhibits, was on the twentieth day of January, 1943, the day of the date thereof, a Commissioner of the Supreme Court of Queensland for taking affidavits, and Commissioner for Affidavits, at Brisbane, Queensland, Australia, duly appointed and qualified, to whose official acts faith and credit are due. I do further certify that the said Henry Gillies in his capacity as Commissioner of the Supreme Court of Queensland for taking affidavits, and as Commissioner for Affidavits, does not have an official seal.

For the contents of the annexed instrument the Consulate assumes no responsibility.

In Witness Whereof I have hereunto subscribed my name and affixed the seal of the Consulate of the United States of America, at Brisbane, Australia, this twenty-first day of January, 1943, A. D.

JOSEPH P. RAGLAND,
Consul of the United States of America.

(Seal)

Service No. 44. Fee $2.00—12s.8d.

($2.00 American Foreign Service Stamp Attached.)

(Filed March 15, 1943. John H. Pugh, Clerk, U. S. District Court. By W. P. W., Deputy Clerk.

Commission for the Taking of Depositions.

The United States of America to: Any Commissioner for Taking Oaths and Affidavits in New South Wales, Australia:

You are hereby authorized and commissioned to take the deposition upon attached written interrogatories of Leo J. Jones, Esq., New South Wales, Australia.

You will propound the questions to said witness, after he is by you duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth and you will correctly record the answers of the witness to such questions. The witness shall subscribe the deposition in your presence. You will certify thereto and return the completed deposition to: Clerk U. S. District Court, Muskogee, Oklahoma, U.S.A.

You will attach to your certificate a certified or duly authenticated copy of your commission or appointment showing your authority to act as such Commissioner for the taking of Oaths and Affidavits.

Done at McAlester, in the Eastern District of Oklahoma, this the 3d day of September, 1942.

GEO. F. CLARK,
Referee in Bankruptcy,
District Court of the United States of America, Eastern District of Oklahoma.

Clerk's Certificate.

I, John H. Pugh, do hereby certify that I am the duly and legally appointed, qualified and acting clerk of the United States District Court in and for the Eastern District of Oklahoma; that the above entitled cause was filed and is now pending in said court; that Geo. F. Clark is a duly qualified and acting referee in bankruptcy in and for said court and that the above entitled cause has been referred to and is pending before said Geo. F. Clark as such referee. I further certify that the signature of the said Geo. F. Clark affixed to the attached and foregoing commission for the taking of depositions is the genuine signature of said Geo. F. Clark. I further certify that said referee in bankruptcy does not have a seal.

In witness whereof, I hereunto set my hand and official seal this the 11th day of September, 1942.

(Seal) JOHN H. PUGH,
United States District Court
Clerk, Eastern District of Oklahoma.

Interrogatories to Be Submitted to Leo J. Jones.

1. Interrogatory Number One: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: My name is Leo Joseph Jones, age 59 years; Residence "Sunnyside" Edgecombe Avenue, Coogee, New South Wales, Australia. Occupation: Government Geologist of New South Wales. Engaged as professional officer of the New South Wales Mines Department for the past 42 years.

LEO. J. JONES.

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco, in the State of California, United States of America, in the year

1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I was a representative of the State Government of New South Wales at the Panama-Pacific International Exposition held at San Francisco in 1915. I acted as Officer-in-Charge of the New South Wales Mineral Exhibit. I was in daily attendance in the Australian Pavilion throughout the whole period of the Exposition. My duties were to advise and lecture on Australian mineral resources and mining matters generally. It was my duty each night to place in a safe the gem-stones and gold exhibits of New South Wales and each morning to display these exhibits.

LEO J. JONES.

3. Interrogatory Number Three: Please give the names, if you can, of others who represented either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales at said Exposition and particularly with reference to the mineral and gem exhibits.

Answer: See Statement No. 3 herewith.

LEO J. JONES.

4. Interrogatory Number Four: Are you acquainted with M. E. Heiser, also known as Morrie E. Heiser and also known as Maurice E. Heiser and if you state that you are acquainted with Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: I met Mr. M. E. Heiser after he had obtained the permission of the Australian Commission to operate a small lapidist's bench in the Australian Pavilion. My acquaintance with Mr. Heiser was possibly of one week's duration.

LEO J. JONES.

5. Interrogatory Number Five: Will you please state whether or not you were acquainted with the exhibits of the Commonwealth of Australia and the governments of Queens-

land and New South Wales at the Panama-Pacific International Exposition? If you say you were acquainted with such exhibits, will you please state whether or not such governments exhibited at said Exposition sapphires, opals, zircons, and other minerals and the extent of such exhibits at such Exposition, together with the building or buildings in which such exhibits were housed, if you recall?

Answer: Yes. I was acquainted with all the exhibits displayed in the Australian Pavilion: Each of the State Governments of New South Wales and Queensland displayed gemstones (sapphires, opals, zircons, etc.) and other minerals in the Australian Pavilion. (See also answer to Interrogation Number Ten.) LEO J. JONES.

6. Interrogatory Number Six: Will you please state whether or not Mr. M. E. Heiser had any connection with said Exposition as a representative of either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales:

Answer: Mr. M. E. Heiser was not connected with said Exposition as a representative of either the Government of the Commonwealth of Australia or the Governments of Queensland and New South Wales. LEO J. JONES.

Answer. Statement Number Three.

The following were to the best of my belief, the only accredited Australian officials at the Exposition:

Commonwealth representatives: Hon. Alfred Deakin, Chairman of Commission; N. Neilsen (New South Wales Commissioner); —— Friche, (Victorian Commissioner); D. Edward, Secretary of Commission, later this position was filled by Mr. Orton.

New South Wales Government representatives: L. J. Jones (Mineral Exhibit), New South Wales; J. Neitsigh, (Exhibits of New South Wales other than Minerals).

Victorian Government representative—C. Harrison (All Victorian Exhibits).

Queensland Government representatives: —— Campbell,

—— Mosby, in charge of Queensland exhibits including minerals and gemstones from that State. LEO J. JONES.

7. Interrogatory Number Seven: Will you please state whether or not Mr. Heiser had an exhibit or display of his own at the Exposition and if so, the extent and size of the exhibit or display according to your best knowledge and recollection and the place where it was housed. Also the length of time the exhibit was maintained by Mr. Heiser and whether or not he maintained the same during the course of the entire Exposition.

Answer: Mr. Heiser received the permission of the Australian Commissioners to erect and operate a lapidist's bench within the Mineral Court of the Australian Pavilion. The space occupied was approximately 8 ft. by 4 ft. At this bench Mr. Heiser gave demonstrations of cutting and polishing opals. Mr. Heiser's display continued for a period of about one week's duration. LEO J. JONES.

8. Interrogatory Number Eight: If you state that Mr. Heiser had an exhibit or display of his own at the Exposition and that the same was not maintained during the entire course thereof, will you please state, if you know, why the same was not maintained by Mr. Heiser until the Exposition closed?

Answer: One of the conditions of Mr. Heiser's tenancy at the Australian Pavilion was that no articles were to be sold by him therein.

As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opal) the Australian Commissioners withdrew his permit to exhibit within the Australian Pavilion. LEO J. JONES.

9. Interrogatory Number Nine: If you state that Mr. Heiser had a display or exhibit at the Exposition, will you please state the names of some of the others who had exhibits in the same building and at the same time as Mr. Heiser had his display or exhibit.

Answer: See Statement Number Nine herewith.

LEO J. JONES.

10. Interrogatory Number Ten: If you state that either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales had either a mineral or gem exhibit at the Exposition, will you please state, if you know, who was in charge of the exhibits and the extent of the exhibits, if you know.

Answer: See Statement Number Ten herewith.

LEO J. JONES.

11. Interrogatory Number Eleven: Will you please state any further knowledge or information which you may have with reference to Mr. Heiser's connection, if any, with the Exposition as a representative of your government or as an individual exhibitor?

Answer: My recollections of Mr. Heiser are that he was a gemstone dealer operating chiefly with rough opal and sapphires obtained from Queensland. I understood that he brought personally from Australia to San Francisco some rough and polished opals and also sapphires, but what quantities he possessed I have no knowledge.

His lapidary exhibition during the short period in which he operated proved of considerable interest and attracted a large number of visitors.

See also answers to Interrogations Numbers Six, Seven and Eight. LEO J. JONES.

Answer. Statement Number Nine.

There were many exhibitors represented in the Australian Pavilion during the currency of Mr. Heiser's display, but in every case these exhibits were under the sole control of the Government representatives of the State in which their operations were conducted. For example, Mr. P. Marks of Sydney had a large exhibit of gemstones, Messrs. Walther and Stevenson an exhibit of hides and leather goods, Messrs. Tost and Robu an exhibit of aboriginal weapons, carvings, etc. These exhibits remained "in Bond" under the supervision of a United States Customs official during the currency of the Exposition. Many of the Mining Companies of New South Wales were represented in the general mining exhibit of the State. LEO J. JONES.

Answer. Statement Number Ten.

(a) Mineral Exhibits.

The New South Wales Government had a large exhibit representative of most of the commercial ores of the State, together with refined metals—Copper, Tin, Lead, Spelter, etc.

These exhibits were displayed on several large trophy stands and in glass cases, they were entirely under my control.

The Queensland Government had a very small mineral exhibit comprising ores of gold, copper, tin and silver-lead. These were displayed on a small single trophy stand and were under the control of the Queensland Government representatives, Messrs. Campbell and Mobsby.

(b) Gemstones (Precious and semi-precious).

The New South Wales Government had an extensive display of gemstones, in the rough, polished and cut, comprising Opals, Diamonds, Emeralds, Topaz, Amethyst, Beryl, Tourmaline, Sapphires, Turquoise, Zircons, Garnets and Pearls. (This exhibit was owned by the late Percy Marks, Jeweller, Sydney and displayed under the supervision of myself—State Representative).

This exhibit was displayed in the five glass cases marked "M" on attached photograph.

The Queensland Government had a small display of gemstones, chiefly Sapphires (cut and in the rough) Zircons (cut), Opals (cut and in the rough), and manufactured *jewellery*. These exhibits were displayed in the two glass cases indicated by the letter "Q" on the attached photograph taken within the Australian Pavilion, and were under the control of Messrs. Campbell and Mobsby (Queensland Government representatives).

LEO J. JONES.

12. Interrogatory Twelve. Will you please state whether or not the governments of Queensland or New South Wales or the government of the Commonwealth of Australia shipped any sapphires, zircons or opals from Australia to San Francisco, which sapphires, zircons and opals were the property of M. E. Heiser and which were exhibited at said Exposition in 1915 by said governments or either of them?

Answer: I know of no Sapphires, Zircons or Opals shipped on behalf of Mr. M. E. Heiser from Australia to San Francisco by the Government of the Commonwealth of Australia or the Governments of Queensland, or New South Wales which were subsequently exhibited at said Exposition in 1915. LEO J. JONES.

13. Interrogatory Number Thirteen: Will you please state, if you know, whether or not said M. E. Heiser had a commission either by letter or other government document to represent either the government of the commonwealth of Australia or the governments of Queensland or New South Wales, or either of them, at said Exposition?

Answer: Other than the permission (possibly given in writing) given by the Australian Commissioners in San Francisco for Mr. Heiser to exhibit and operate a lapidist's bench in the Australian Pavilion, I know of no commission either by letter or other Government document to represent either the Government of the Commonwealth of Australia or the Governments of Queensland or New South Wales having been issued to Mr. Heiser.

LEO. J. JONES,
(Signature of Witness)

Commonwealth of Australia, State of New South Wales, Sydney, to-wit:

I, Clifford Philip Dignam of 160 Castlereagh Street, Sydney, in the State of New South Wales, Commissioner for Affidavits, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of Leo J. Jones of New South Wales, Australia, upon written interrogatories, do hereby certify that in pursuance of such commission I caused the said Leo J. Jones to appear before me and did then and there administer to him an oath that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said Leo J. Jones after having so been duly sworn did testify and did answer the interrogatories so propounded to him as set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly re-

corded by me and are the true and correct answers of said Leo F. Jones thereto.

I further certify that I am not interested in any way in the event of this action and I am not an attorney for nor related to any of the parties connected therewith.

C. P. DIGNAM.

(Seal) I certify that I have not a seal.

C. P. DIGNAM.

The Chief Justice
Sydney.

I the Honourable Philip Whistler Street, Chief Justice of the Supreme Court of New South Wales, by virtue of the Oaths Act 1900, and ~~all~~ of all other powers enabling me in this behalf Do by these presents appoint Clifford Philip Dignam of Sydney to be a Commissioner of the said Supreme Court to take and receive affidavits concerning any matter within the jurisdiction of any Court so long as he shall continue to reside at the place above named or until this appointment be cancelled.

Given under my hand and the Seal of the Supreme Court of New South Wales this eighteenth day of May in the year one thousand nine hundred and twenty-six.

P. W. STREET, Chief Justice.

Seal of the Supreme Court of New South Wales.

I, Clifford Philip Dignam of Sydney aforesaid, hereby certify that I am identical with the person named above and that the above is a true copy of the original Commission of which it purports to be copy the same having been compared therewith by me.

Dated at Sydney this thirteenth day of January, 1943.

C. P. DIGNAM.

Filed March 15, 1943. John H. Pugh, Clerk U. S. District Court. By W. P. W., Deputy Clerk.

Photograph of Gold and Gemstone Display in the Australian Pavilion, Panama-Pacific International Exposition, San Francisco 1915. (see also portions of mineral trophy stands).

...is the photograph referred to in answer to Interrogation ...or Ten, and marked "P" and "Q".

Objectors Exhibit CC.

Reporter's Transcript of Arguments on Motion to Vacate Judgment and Set Aside Default.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge Presiding.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Defendant. No. 7256-C-Law.

Appearances: Leonard J. Meyberg, Esq. For Plaintiff. Cobb, Campbell & Kelley, By Francis B. Cobb, Esq. For Defendant Leonard Woodruff and P. M. Jackson, Trustee in Bankruptcy.

Los Angeles, California, Tuesday, September 26, 1939. 2 P. M.

Mr. Turnbull: With the permission of counsel, I will state that I am one of the attorneys for the petitioning creditors in the bankruptcy case. May I have it stated whether these proceedings are in the bankruptcy case or in Heiser vs. Woodruff? I am not interested in any way, except on behalf of the petitioning creditors in the bankruptcy proceeding.

The Court: The court's understanding is that these proceedings are in the case of Heiser vs. Woodruff.

Mr. Cobb: Mr. Turnbull appeared for the trustee in bankruptcy in the Oklahoma proceeding. Mr. Turnbull has filed an inventory out here. There has not been any determination yet as to which court is going to try the matter.

Your Honor will recall, the first point made under my points and authorities, which I briefly touched on, on the last occasion, was that this action was filed in 1935. Summons was issued July 11th, and delivered to the United States Marshal. Thereafter, summons was returned, which return by the marshal shows that he had not served the same, and a new summons was issued in April, 1937. The new summons, as your Honor will note from the file, complied with the law *is* it then existed. This court, and the courts of these United States, were acting under the con-

formity act. In other words, the summons had to be served in an action at law in the District Court the same as it would have had to have been served in the State court if the action had been brought there, and that required personal service. After the alias summons had been issued, 1937, Congress enacted an act, giving the Supreme Court power to adopt the Federal Rules of Procedure, and after considerable delay those rules became effective in September, 1938. The Congressional act, in which those rules were adopted, provided:

"Be it enacted * * * That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the District Courts of the United States. * * * Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."

On January 25, 1939, pursuant to application made to Judge Yankwich, of this court, an order was entered providing that E. M. Daniels should serve the summons and complaint in this case, in lieu of the United States Marshal. The return on which the default has been entered in this case shows that service was not made by Mr. E. M. Daniels pursuant to Judge Yankwich's order, but by the United States Marshal.

Now, in that connection, we contend, first, that this summons was outstanding before the Rules of Civil Procedure became effective, and that process could not be served except in the manner and as provided by law which was in existence at the time summons was issued. Your Honor will note that under Rule 4 of the new Rules of Civil Procedure, it provides for a form of summons, and that summons, under the new rule, is different from the summons served in this case.

The Court: What is the summons under the rule?

Mr. Cobb: Rule 4, subdivision (b). And in that connection the principal departure of the summons in this case is that it does not contain in the body of it this language:

"the time within which these rules require the defendant to appear and defend, and shall notify him that in case of

his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

And further, that it shall be directed to the defendant, and state the name and address of the plaintiff's attorney.

In the first place, it made no reference to the Federal Rules of Civil Procedure. It also did not contain the name and address of plaintiff's attorney.

Your Honor will note that the form of this summons which I have before me, under the Federal Rules of Civil Procedure, in compliance with this rule, sets up the name of the plaintiff's attorney, or the plaintiff and his address, or requires the defendant to file his answer and to serve a copy upon plaintiff's attorney, and it must notify him also that he must defend or appear in accordance with the law and the Rules of Civil Procedure. That was absent in this case.

The Court: I don't know that I grasp that. You say it must contain notice that he must appear and defend in accordance with the rules of—.

Mr. Cobb: Civil Procedure.

The Court: (Reading): "The summons shall be signed by the Clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend."

You think there should be a reference to the rules?

Mr. Cobb: Yes, your Honor, or a statement of the time that he has to appear in accordance with the rules.

The Court: I suppose that is in the summons, isn't it?

Mr. Cobb: The summons here provides that in 20 days he must appear and answer—within 20 days, but it did contain no reference to plaintiff's attorney, except that his name was on the back of the summons—the original as filed here. I would like to present to you the form shown as Form 1. Summons—which reads:

"To the above-named defendant.

"You are hereby summoned and required to serve upon ....., plaintiff's attorney, whose address is ..... an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

"This summons is issued pursuant to Rule + of the Federal Rules of Civil Procedure

"(Seal of the U. S. District Court. Dated .....)"

If your Honor will examine the summons in this file it is issued under the attest of this court, and it doesn't require him to file a copy of his complaint on plaintiff's attorney or show plaintiff's attorney's name and address except as it can be obtained from looking at the back of the complaint.

As I say, your Honor, that shows the fallacy of allowing plaintiff to proceed on the service under these federal rules by not complying with the form of the rules under the form of process.

It is my argument that this action, having been commenced before the rules were adopted, he should have personally served summons in accordance with the law then in effect, or if your Honor differs with me on that, he should have had summons pursuant to these rules and have served it in accordance with these rules. Following that same rule, subdivision (c), it says:

"By whom served. The service of all process shall be made by a United States Marshal, by his deputy, or by some person specially appointed by the court for that purpose."

It says "or"; it does not say both of them can serve it. In this case Mr. Daniels was designated to be the person to serve it. The Supreme Court, under the language, did not allow both parties to serve it. It says, "or by some person specially appointed by the court", and Mr. Daniels didn't serve it.

I also have submitted in my points and authorities several cases in which the wrong marshal made the service. These cases arose where two districts were near each other, and there was one case, I believe, where the marshal was away on his vacation and the other marshal administered his duties, and the court set aside a judgment for the reason that—quoting from the language of the court:

"If the marshal is commanded by the writ to serve it, no other person may perform that duty."

We submit that language can be paraphrased to say if Mr. Daniels was designated by the court to serve the writ, no other person or marshal should serve it. The court, following the question of jurisdiction, has always held that the form of process and service of it being the manner by which the court acquires jurisdiction of the person or parties strictly construed requires that the requirements of the law be examined in every instance, because it will lead to a great deal of trouble and confusion if we have different forms of process by different persons other than those authorized by law to serve it.

Proceeding with my second point, that the judgment was prematurely entered, in that the complaint was based upon a judgment liability upon an alleged conspiracy, in that judgment was entered against one defendant prior to the trial of the issues with respect to the other defendants.

The court will note from the file that one Calvin Smith and Leonard Woodruff were charged with a conspiracy which had for its object to defraud plaintiff of certain uncut stones. From the allegations of the complaint it appears that this fraud arose out of a conspiracy; in other words, Mr. Woodruff alone did not perform all of the acts charged, nor did Mr. Smith, but by the joint charges of what one didn't do and the other one did, and it was a conspiracy with them, and a charge of fraud arose out of a conspiracy. We submit that this is a joint liability, and under the law as stated in Hill v. Lansing, 91 U.S. 160, Moore's Federal Practice, Vol. 3, Section 3169,—these points are all set forth in my brief—the rule is stated:

"The common law rule that prevails in this state as in

a majority of the states is that in a joint action judgment must be against all the defendants or against none of them. Formerly Section 19, C. 177, allowing judgment against less than all the joint contractors does not apply where one of the defendants alone files a consent which is not personal, but goes to plaintiff's right of recovery against all defendants. It follows the notice of motion for judgment should be quashed as to both defendants."

In this case Mr. Smith's answer is still on file, and the action is going to have to proceed to trial as against him. We have in this state the rule in respect to conspiracy. In other words, you can't prove it by the action of one party; it has to be a joint action. I submit in this case the default judgment was premature, while the answer of Mr. Smith requires the case to be tried on its merits.

The additional ground I desire to submit is that the complaint did not state a cause of action.

A motion to vacate a default judgment, pursuant to Section 473 of our California Code of Civil Procedure, which code section has been adopted by the Supreme Court and embodied in Rule 60 (b) of the new Rules of Federal Procedure, provides that a party, within six months, or his legal representative, may move the court to set aside a default judgment. The courts have held that this is a direct attack upon the judgment, and not a collateral attack.

Your Honor, I believe at the last hearing, asked me if the judgment was void, and I told your Honor it was not void as against collateral attack, but on a direct attack, which is in the nature of a review and a special proceeding to reach the judgment, the courts have held that if the complaint does not state a cause of action the court should grant the motion.

In this connection I have cited and quoted from numerous cases, and I can summarize the cases, I think, in the language of

Wood v. Carpenter, 101 U.S. 135.

The language of the Supreme Court in that case has been quoted in practically every case in this state, and

every other state, on the question of what is necessary to allege to state a cause of action for fraud, where the action is brought after the expiration of the three-year period.

We go back in that connection to the pleadings required in respect to fraud. In this complaint it is alleged merely that plaintiff was defrauded by Woodruff and Smith, and that's all it said, that he was defrauded; there would be no question but what it did not state a cause of action, because the courts have been strict in requiring allegations of fraud to be made specific and certain, and the Supreme Court of the United States extended that doctrine, as it is now universally adopted, that where you bring an action after the expiration of the three-year period you not only have to allege the same elements constituting the fraud, but you have to go beyond that and allege, where you do not specify it within the three-year period, by setting up the facts, so the court can determine from your complaint whether you have been guilty of laches, or whether you are excused from not having discovered it sooner. This case of Wood v. Carpenter provides that:

"In this class of cases plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealments, or misrepresentations were discovered, and what the discovery is, so that the court may clearly see whether, by ordinary diligence the discovery might not have been before made. A general allegation of ignorance at one time and of knowledge at another is of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner."

This complaint is totally lacking in that respect. The only point is that they allege they discovered this fraud a short time before—I think back in '32, and even its discovery there would still be beyond the three years, if it had not been alleged that defendant on information and belief believes he was out of the state for the three years, in order to bring it within three years from his discovery.

Under the allegations of the complaint he did not only wait within three months of three years to bring the action,

but he did not allege any fact as to why he did not discover it sooner. The alleged fraud was consummated by an execution sale made in the Superior Court, which was a matter of public record, and he states he was without the state and traveling around during a portion of this time. In that connection I find a case, almost squarely in point, except that the man was in the federal penitentiary instead of traveling in Europe. The charges of fraud were matters of record, and the court said in those cases—Woodruff v. Carpenter; Lady Washington v. Wood—that he was not excused, and his attempt to allege excuse did not state a cause of action in those cases.

"In the instant case the allegations to the effect that plaintiff did not discover the alleged fraud until immediately after he had been confined in the state penitentiary is insufficient under the rule of the authorities cited. No facts nor circumstances leading to the alleged discovery at that time are pleaded."

Here there is no allegation in this complaint showing how he made the discovery, and I have an affidavit here which I am going to ask to file at a later date showing that it is sworn testimony given before the Corporation Commissioner, when Mr. Heiser applied for his license there; I have a transcript of the testimony, some three volumes, and it shows that in 1930 and 1931 Mr. Heiser was back here, and he and Mr. Smith go to Houston, Texas, to try to make another sale and it just goes to show if he went to trial in this case on its merits, your Honor, there is no fear in my mind but what the entire matter could be defeated, not only on its merits but on the statute of limitations and the alleged fraud. The importance of having Mr. Heiser allege under oath that he did not discover these facts; how he could discover them, and so forth, would have prevented him from filing this complaint. That is the importance, in filing a fraud action charging the person with fraud, in not meeting the requirements set forth under the cases by our courts. I have analyzed the complaint; I have prepared a written analysis of it, and it is totally lacking in that essential element; and the authorities in every case provide that that is an essential element to be pleaded; otherwise the complaint does not state a cause of action.

The next point I make is that the complaint does not state a cause of action for conversion, for the reason that it is alleged in this complaint that Mr. Heiser deposited these gems down at a bank and gave Mr. Smith access to them; that if Mr. Smith sold any of the gems he was to account to him for his sales, and it is also alleged that these gems are property. He doesn't say gems; he says that plaintiff's property was transferred to the Golden State Gem Company of Nevada. They claim that was on certain conditions, and that those conditions were not met, but anyway it was transferred.

If the corporation owned the property, or if Mr. Smith was given the right to take the property and sell it, an action for conversion is not the proper remedy. As the court said in Thompson v. Culver City Motors, 4 C.A. Fed. (2d), 639, a very late case:

"Where the right or authority is given to sell personal property for another, a conversion of the property does not result from the failure to pay over the proceeds, and an action in conversion is not the proper remedy."

And also further cases, which state that an action for a conversion will not lie unless the ownership of the property and the right of possession of the goods are in the plaintiff. I have several cases cited in support of that rule.

If Mr. Heiser transfers this property to the Golden State Gem Company of Nevada—and, again, I have this transcript here with sworn testimony that he did do so; that he was secretary of the company; that he received stock for it—if he transferred it to this corporation he has not the right to maintain an action for conversion. Only the corporation can, because the corporation would be the one entitled to the possession and ownership of the property. If he rescinded the transfer to the corporation, so that the property would be back in him, he might maintain the action, but there is no rescission alleged in this case, your Honor.

Now we come to another point which does not go to the question of the entry of the judgment, but to the sum of $100,000 allowed for interest.

In this case interest was allowed from the date of the alleged execution sale, the 13th of May, 1929. On an action for conversion, if Mr. Smith had owned the property, or the Golden State Gem Company did, and your Honor differs from me on my premise, it is still necessary for Mr. Heiser to demand that this merchandise be turned over to him before he is entitled to interest. In other words, he can't have conversion until somebody refuses to turn over the property, or the property has been destroyed, or something of that character. In this case he alleged he made demand. It has been denied, but he does not say when. If he alleged it was 1929 he is barred by the statute, in that it would be inconsistent, because he did not allege the loss or discovery of the fact until 1932. He could have made demand for the return of this merchandise in 1929, without knowing the facts, and if he did he was out, under the cases I have just cited, and if he did make the demand in '32—and again I say he does not allege the date—he can only recover interest from the time he made the demand for the return of the property.

And another point, your Honor, is that this complaint consists of three counts. The defaulted judgment does not relate to any one count. The first count is for a conspiracy and a fraudulent conversion; the second is an attempt to plead the loss of certain mining stock, and other matters, and the third is for damages he is alleged to have sustained, and he incorporates by reference a portion of the previous cause of action.

In this case, your Honor, it is quite material for Mr. Woodruff, in respect to his getting his discharge—it is material as to whether the judgment should bear interest, because an action for damages for fraud, being an unliquidated claim, does not bear interest in an action for conversion. The law is that you are entitled to the value of the property and interest, on that claim, from the date of the conversion. We can't tell from the complaint here whether the default judgment is based upon count 1 or count 2 or count 3.

Also, Mr. Woodruff has filed a petition in bankruptcy. An action for fraud is not the discharge date, while on an

action for damages, or even an action for conversion, it is the discharge date. It becomes quite material again, and we have made the point, and the rule is that any count of a complaint in a Superior Court action, is quite distinct, and it must stand on its own feet. We submit there should have been a dismissal as to two counts, and a judgment entered as to one, or the judgment should have recited whether it is entered on count 1 or 2 or 3.

The next point that is made is that the complaint is barred by laches and the statute of limitations.

This point I have partially covered in my previous argument about the complaint not stating a cause of action, but it also appears upon the face of this complaint, assuming everything to be true as alleged, that plaintiff is guilty of the grossest form of laches. In other words, a man does not in 1928 turn over $200,000 or a half a million dollars worth of property and go running around the world, and lose that property, and not discover it or do anything about it until 1935, seven years later.

The seriousness—and the reason for the rule—and the courts have invoked it time after time, is that documents are lost, and witnesses removed, and, as in this case, when the company was in bankruptcy and the bankruptcy court destroyed its records after a certain period of time—all the way down the line it makes it very difficult to submit to the court the actual facts, and it is for that reason that the courts have, especially in fraud actions, adopted the rule requiring that a party must be free from laches, and must have a real meritorious excuse before he can come in, after the statutory period of time, after three years, on a fraud action—and the statute is three years, without regard to discovery, or conversion, if he relies strictly on conversion; and the courts have held that on a motion to set aside judgment of default under Section 473, and, as I say, 60 (b) of the Rules of Federal Procedure, under which we are making this motion, is word for word after the California Code Section. If we read the history of the adoption of Section 60 (b), it is stated that it was taken after the California Civil Code of Procedure, which has worked so well in this state, and, as Mr. Simkins points

out, all the California cases provide for a liberal construction of this section with the object in mind of giving a defendant who appears to have a meritorious defense a chance to have the case tried upon its merits, and then suggests that courts will, in construing this rule, adopt the same construction that the California courts have stated, and they follow again Wood v. Carpenter, 101, 135, that the

"Statutes of limitations are vital to the welfare of society and are favored in the law. They are found and approved in all systems of jurisprudence. They promote repose by giving security and stability to human affairs; important public policy lies at their foundation; they stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary."

In the case of Lilly-Brackett Co. v. Connemann, 157 Cal. 192, quoting from page 196, a motion was made to set aside default in that case, and the defense that was alleged to the cause of action was that the claim was barred by the statute of limitations, and the point was raised that that was not a meritorious defense on a motion to set aside a default judgment, and the Supreme Court settled that question in California by saying that it was a meritorious defense, and if that were the only defense set up, that they were entitled to have the motion set aside. Reading from the case:

"The sole question, then, is whether a plea of the statute of limitations is an answer to the merits. The point is one that has come before the courts of various states; and while the earlier cases showed a tendency to hold that such a plea is merely technical, and should not be permitted to defendant who has been in default, the decided weight of authority, and particularly of modern authority, supports the view that the statute of limitations is to be viewed as a statute of repose, and, as such, is a meritorious defense which may with propriety be set up after a default has been vacated."

I have cited in my brief other cases that follow that, and that is the rule, your Honor, in all of the cases in this state, and, as I say, if we follow that language of the

California Code of Civil Procedure and Section 60 (b), where they are the same it shows that by enacting that rule they intended to adopt also the decisions construing that section. In that connection, your Honor, Section 437—

The Court: I prefer that you not read any decisions. Do you think you have stated all of your points, Mr. Cobb?

Mr. Cobb: No, your Honor.

The Court: You had better hurry. You have been almost an hour already.

Mr. Cobb: Those cases I was about to read from state the rule to be—

The Court: Mr. Cobb, you must state your points. Your last one is as to laches; that is what you are on now. I know what you say about that. Take up your next step.

Mr. Cobb: The next point is that where personal service of summons has not been made you don't have to set up, under our *proceedure*, any excuse for not having answered; that if the summons has not been personally served, if he shows a meritorious defense, the court has the right to penalize that defendant for any expense he has caused the other side.

The Court: Where do you get that law?

Mr. Cobb: To start with.

The Court: I don't mean California decisions, I mean statutes.

Mr. Cobb: Section 437-C of the Civil Code of Procedure. This case squarely holds that he has it, as a matter of right, and then they reverse the case; they said there was no discretion in the court, if the affidavit showed a meritorious defense, though the court has a right to impose upon the defendant as a condition of coming into court a charge to cover the expense that the plaintiff has incurred, and, your Honor, when we consider the size of these judgments—

The Court: I will agree with you fully there. You don't need to spend any time on that at all. It is a heavy judgment; no question about that at all.

Mr. Cobb: I am appealing to your Honor, on behalf of the creditors and the bankrupt estate—

The Court: Are you appealing from Oklahoma or from Los Angeles?

Mr. Cobb: Your Honor, I have filed with you an order of the District Court of Oklahoma permitting me to file this motion on behalf of Mr. Jackson. That's where I get my authority, and Section 60(b) of the Federal Rules of Civil Procedure provide that the legal representative may move.

The Court: In reference to the amount of the judgment, if you had been here at the time of the previous hearing, you would have found that that was a matter of very considerable concern to the court, and the court attempted to state his position on it as frankly and fully as he could, but found no alternative but to enter the judgment as the evidence showed. I will admit I did it, as I stated at the time, with considerable reluctance, but nevertheless it appeared to be the only thing to do.

Mr. Cobb: As we pointed out, the trustee in bankruptcy, under the authorities, should have the right to present this case on its merits, and we are willing to stand any expense if your Honor will give us that chance. And on the point of this judgment I have been unable to find any authorities—in fact, there is one California case which held that if the court reopens a default, and does not allow a special defense by the statute of limitations of some other defendants, that that is error; in other words, the case has to be reopened as a whole, not on the judgment as to a particular point.

I do plead for the creditors of these parties, who were in no fault; who did not disobey this summons; were not guilty of any negligence; and I am willing, your Honor, that you impose a penalty for any trouble that has been caused in the matter; but do give us a chance to come into court on this case on its merits, and at this time I will propose an affidavit taken from the transcripts taken on the hearing, which goes to show that Mr. Heiser at the time he alleges in his verified complaint, he was in France

trying to work out a sale for this corporation; that he was selling merchandise of his own, trying to promote a stock company there. He also charges in the complaint that he was totally ignorant of stock ventures.

The Court: That is entirely collateral. That is nothing for the purpose here. I notice that Mr. Meyberg raises the section of the Code of Civil Procedure which he says concludes you in this matter. Do you have that in mind—1001 or 1010?

Mr. Cobb: Yes, your Honor. I have that in mind, and your Honor will note that the motion is made by Mr. Jackson, who is not a party to the original proceeding, and your Honor will recall that I called at your Honor's chambers and told you I desired to make a motion on behalf of Mr. Jackson to have this judgment set aside, and that the court required that an order be obtained in respect of the matter; otherwise there might be some contempt. Your Honor said it might be a salutary rule, but it was not a rule in this court, or under the Federal Rules of Procedure. That section is not a part of our procedure; it is purely a state court procedure. I would have presented the order only I did not think it applied, and in safety I asked your Honor whether I should submit a formal order, and I am completely convinced that—

The Court: I don't believe you are in contempt. I don't know what the merits may be, but I was perfectly willing for you to present whatever you had. I would not think it ill that you did that. I have no understanding it was covered by the code section. Have you said all you want to on that section?

Mr. Cobb: In order to point out to the court, the case that I cited says that the motion under Section 473 can be renewed by even the same party at a subsequent date; under 60 (b) the case I cited, a late Supreme Court case, gives the trustee in bankruptcy the right to make this motion. I submit that we have the complete right to make this motion.

The Court: It is not a question of your right to make the motion. It would be solely a question as to the effect

of the situation heretofore. I am not objecting to your making the motion, but what I have in mind is, what is the legal effect of proceeding as heretofore, when the previous motion was made.

Mr. Cobb: Do I understand you to mean whether I can renew that, your Honor, or whether I am barred by the order on the matter?

The Court: Yes; whether you are barred by the order already made.

Mr. Cobb: No; I don't believe so, on the case I have cited, where they went to the Supreme Court of this state, your Honor—a man took an appeal from the judgment; his appeal was dismissed, and the judgment was final; then the trustee in bankruptcy for this man came in and made a motion under Section 473, to set that judgment aside and permit him to come in and file an answer and defend the case. There was a case not only where there was a final judgment, but it had been on appeal, and the Supreme Court said that the trustee in bankruptcy had that right, and I have quoted in my points and authorities from that case, and there seems to be no question about it.

Mr. Meyberg: On that particular point, may it please the court, I pick it up where counsel left off. That case is one wherein the defendant proceeded under Section 473 to obtain relief from a judgment, and made a statement of certain facts. The court denied the motion, but without prejudice, stating that he had the right to renew, if he could prove the facts which he had alleged, holding he had not proved them, and counsel stated that he could still prove them, and counsel then on the second motion moved on the same facts, and the court denied the motion and the appeal. The Supreme Court held that the second motion was all right by reason of it having been denied without prejudice, but held that the finding of the court would stand, and that the Supreme Court would do nothing more.

I find no authority by counsel except that one case which he cites, outside of a statement in Corpus Juris, which he does not include, but in there there are no cases cited which give the right to the defendant to continue to make these motions.

I submit to your Honor that nothing is in the Rules of Federal Procedure, similar to 1008 of the Civil Code Procedure of the State of California, which I set up in my motion to strike, but there being no reference to that rule, it would be in conformity, so far as the Rules of Federal Procedure are concerned. So much for that, merely because counsel finished with his suggestion to your Honor, that he had a case in point, but cites no case in his brief in point. The case, Gray v. Lawlor, 151 Cal. 352, which he says he has, is not in point, I submit.

Now, as to our motion here, first, of course, Mr. Cobb was not present and apparently has not checked the record on file in this case as to the past procedure, and is not familiar with it. I am assuming that from the pleadings he has filed. It is interesting to note that in his argument he has set forth no grounds for his motion. All of his argument is on the merits of the case. He has stated no ground of these things under Rule 60, which are through the mistake of Mr. Woodruff. He has said nothing about any mistake Mr. Woodruff made, or the inadvertence of Mr. Woodruff; he has said nothing about the inadvertence, the surprise of Mr. Woodruff, or excusable neglect. He has given no grounds in his motion, and no grounds here, I submit, in his argument. He has only argued on the question of merit from one thing to another.

I will take that up, if your Honor believes any of that should be answered, although I think there is a legal answer to all of that. Even the statute of limitations—even the cases counsel cites in his brief, hold it is a statute of repose, unless put in by demurrer, and states a good cause of action. In every case counsel has cited, time after time a demurrer is interposed, a special demurrer of the statute of limitations. Counsel does not tell that to your Honor, so, so far as the complaint is concerned it states a good cause of action against the statute of limitations; but that still goes to the merits.

Now, so far as the questions of service are concerned, your Honor, without going into the details or the actual situation regarding the actual service with which I believe your Honor is familiar—there is plenty of it in the record here; lots of affidavits, the time when he received it and

all—irrespective of that, the defendant Woodruff has appeared in this action. Your Honor, if he appeared and did nothing else but stand before the court with his counsel present, and asked the court for a stay of execution, he has appeared, if there was any service that was wrong. In addition to that, there is a stipulation here where plaintiff waived several causes of action and several rights or interests of the plaintiff are waived by the plaintiff by this stipulation.

The Court: I don't know that I grasp that.

Mr. Meyberg: There has been a general appearance by the defendant.

The Court: Yes.

Mr. Meyberg: And the cases hold, may it please the court, that the appearance of the defendant is a general appearance if he asks permission to file a defense on the merits. He is not appearing even specifically here at this time. He is asking the right to file an answer. He is not before this court on a motion to quash service. That point isn't raised; that is waived. I am not saying we haven't got a good answer to all counsel suggests here, but I am just going on the theory that there is not any question of that kind involved.

Let me go to the question of the motion to strike, which I believe creates quite a serious situation for the defendant. The defendant in this action, or, rather, the moving party, moves jointly in behalf of Leonard Woodruff and P. M. Jackson. Now, if he moves on behalf of Leonard Woodruff he is moving jointly on behalf of both. If he moves on behalf of Leonard Woodruff, Mr. Cobb is not an attorney of record. As I suggested the other day, and as the court very aptly pointed out to counsel, he was not technically in this thing, but in this particular case, he asked counsel as a courtesy, or the court, probably, would he give him authority to appear. I believe that is stated in more exact terms than that. Nothing further has been done. Mr. Cobb still appears as a stranger, so far as the record is concerned. Ames Peterson, Beveridge, and Fitzpatrick all appeared as counsel for Mr. Woodruff. Counsel would have no right to file a motion on behalf of Woodruff unless

he were substituted. He is a perfect stranger, so far as the record is concerned.

Second, he answered on behalf of P. M. Jackson, and makes a motion. Before P. M. Jackson can make a motion, I submit that he must file his petition to intervene, and that petition must be granted under Rule 24 of our Rules of Civil Procedure, which provide:

"Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene:"

and so on and so forth.

Even if there is an unconditional right by statute to intervene still he must petition the court for the right to intervene, or he is not a party to this record, and cannot move for the relief, and the Rules of Procedure provide in (c) of Rule 24, as follows:

"Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense by which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene."

May it please the court, how can these parties as strangers to this court, file a motion and bring before your Honor an action—

The Court: Doesn't the term "intervention" imply other interests. The trustee in bankruptcy represents, I believe, most of the creditors of the bankrupt.

Mr. Meyberg: The creditors, your Honor.

The Court: He represents the bankrupt also.

Mr. Meyberg: If he represents the bankrupt he would have to be substituted; he would have to come in under the rule in regard to substitution. He could not come in just as a stranger.

The Court: It is the same situation as that presented by an administrator.

Mr. Meyberg: The same thing. He would have to come in by substitution on motion.

The Court: In place of the defendants?

Mr. Meyberg: Exactly, your Honor.

The Court: Just to interrupt you—Mr. Cobb, I do recollect now that I said something about your representing Mr. Woodruff personally in court. Was anything done about that?

Mr. Cobb: Your Honor, I have to get a substitution from Oklahoma. I haven't had time to, of course, get an order of substitution, if your Honor requires it.

The Court: Mr. Meyberg is exactly right. I am disposed to proceed with extreme caution in this case. I recall that now. I did not while you were speaking about that. That seems to be the case.

Mr. Cobb: Your Honor, let me state I did not understand your Honor, and I would be glad to, if your Honor feels that way. My statement was that the Supreme Court in the case of Nuckolls v. Bank of California—the Supreme Court held, in 10 Cal. (2d) 273, that the trustee in bankruptcy had a right to come in and make this motion.

The Court: I will agree with that all right, but what I had in mind was you are making it on behalf of Mr. Woodruff.

Mr. Cobb: May I answer, if that was under the Bankruptcy Act, I think Section 67 of the Act provides that the trustee shall have all the powers to act for the bankrupt, which the bankrupt could have exercised for his own benefit. I made the motion in Mr. Woodruff's name, on behalf of the trustee, and I submitted, your Honor, a certified copy of the order appointing the trustee and the order of the court authorizing me to make this motion. I am not appearing for Mr. Woodruff that is to be before this court. I am appearing for a different Mr. Woodruff; in other words, the trustee has taken over his powers and duties.

The Court: Then you should eliminate Mr. Woodruff.

Mr. Cobb: Except I used his name in the motion.

The Court: Wait a minute. I understand your motion is on behalf of Mr. Woodruff and the trustee. Am I right?

Mr. Meyberg: It is, your Honor, in the notice of motion.

Mr. Cobb: We can eliminate Mr. Woodruff and I could stand on the motion on behalf of Mr. Jackson.

(Here follows the decision of the court heretofore transcribed.)

Reporter's Transcript of Ruling and Remarks of the Court on Motion to Vacate Judgment and Set Aside Default.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge, Presiding.

M. E. Heiser, Plaintiff, v. Leonard Woodruff, et al., Defendants. No. 7256-C-Law.

Appearances: Leonard Meyberg, Esq., for Plaintiff. Cobb, Campbell & Kelley, By Francis B. Cobb, Esq., for Defendant Leonard Woodruff and P. M. Jackson, Trustee in Bankruptcy.

Los Angeles, California, Tuesday, September 26, 1939, 2 P. M.

The Court: I think I may state my position in this matter and I will do so with entire frankness: I was struck with the amount of this judgment, on the trial of the case. The record, in respect to the service, shows a condition of affairs that in my judgment deprives the defendant of anything in the way of indulgence, altogether; and, again, we spent several days here trying to ascertain the value of this material, of which there were several bags, and I was very considerably surprised at the value given by apparently

very disinterested witnesses. In fact, the weight of the testimony showed the material to be of considerable value, but the defendant himself, being in court all the time, or, at least nearly all the time, failed to offer himself as a witness. He was competent to testify, and he did not see fit to testify.

That being the case, the value seeming at first glance to be something very considerable, there was in reality nothing for the court to do but to give the judgment it did.

When the motion was made all the facts existed upon which you now depend to have it set aside; everything existed then that exists now in that respect, so far as the merits of the motion go.

The motion was presented. I don't remember just what was done in the way of formal order, but so far as setting the default aside, so far as the appearance of this defendant went, that was denied, and we rather agreed that he might produce evidence as to the value of the gems. That was the result, and that was about the way the thing came about.

There comes to my mind now this one element: Mr. Meyberg, what do you think about the service of summons in the form of that used? The summons that was actually served was in the form issued by the federal court?

Mr. Meyberg: In the clerk's office.

The Court: And followed, of course, the form used at that time?

Mr. Meyberg: Supplied by the clerk.

The Court: To what extent does that follow the state form?

Mr. Meyberg: It was the form issued out of the United States clerk's office. The only thing counsel says was not on that form that should have been on there, would be the address of counsel. It had my name on there, and it was attached to the copy of the complaint, which had my address

on there. That is shown in the record; so that everything is complied with that was required by statute.

The Court: That straightens me out on the form of the summons.

Mr. Meyberg: Yes, the form is correct.

The Court: I am satisfied that the service was good as of that time, being after the rules went into effect.

Mr. Meyberg: In addition to that there has been a general appearance by the defendant, which would waive any question of that kind.

Mr. Cobb: Counsel made a mistake there which I would like to correct. That stipulation specifically provided that Mr. Woodruff was not waiving his motion which was made to quash service of the summons.

Mr. Meyberg: That is not true.

Mr. Cobb: I would like for the court to read the stipulation that was made. It reserved that point. I submit, your Honor, that since the default judgment was never set aside you could not have an appearance.

The Court: I think that, especially having in view the gyrations that have followed since that date, the best thing for the court to do is to dispose of this matter so that the matter may go on, as no doubt it will be appealed to the upper court.

Mr. Cobb: May I say I doubt very much if there can ever be an appeal in this matter. That is what so shocks us and alarms us, and why I beg your Honor to impose a penalty, and let us pay them three or four thousand dollars for Mr. Meyberg's time, and try this case on its merits, because I think, with all due respect to your Honor, your Honor knows we have never had a chance to try it on its merits; we have never had a chance to prove by documentary evidence facts I know can be proved, and which will defeat this trial on the merits. The question of value is hard to show, but it is to reach the merits of this case, your Honor, on defenses which I know can be presented. I am speaking for the creditors, and if there has been any disrespect to

the court on the part of Mr. Woodruff, I submit the trustee is not chargeable with that; but do let us present the case on the merits, your Honor, with the penalty your Honor feels is fair to assess.

The Court: The matter stands submitted. The motion is denied.

Mr. Cobb: Your Honor, does "submitted" mean that you will consider it further?

The Court: No, it is decided. That is merely for the purpose of the record, so that there will be no aftermath.

Mr. Cobb: Your Honor ordered Mr. Meyberg at the last hearing to prepare an order. That has not been prepared. Only a minute order appears on the record, and I submit we are entitled to have a formal order. He was directed to prepare such formal order, and if your Honor would require him to do that, the formal written order could also include the motion today, in order that such record will be straight.

Mr. Meyberg: May I state, your Honor, counsel never having been present probably would not be familiar with that subject, but at the time your Honor ruled, your Honor stated that Mr. Meyberg could prepare the order if he felt that one was necessary. The clerk did not get other than "Mr. Meyberg prepare the order", but your Honor will have in mind the judgment was entered, and the stipulation was that the court found the value of the gems less than the amount in the judgment—

The Court: I have no recollection of the situation with respect to the judgment, so am totally helpless in the matter.

Mr. Cobb: The minute order was that your Honor instructed Mr. Meyberg to prepare a written order.

The Court: If that was so, then Mr. Meyberg will have to suffer the consequences. I am not going to change or add to the record now.

Mr. Cobb: The order is that he will prepare such order?

The Court: I am making no order at the present time, Mr. Cobb. As I say, I would not add or detract from what

has been done heretofore, because I myself have no memory of it.

Mr. Cobb: The record should be complete. In other words, if we try to take an appeal now, the written order has not been filed pursuant to the minute order denying the motion, and they would say that since no such order is filed that we cannot take an appeal. Because that was the order we are entitled to either prepare the order ourselves—

The Court: Your appeal will lie from the minute order, will it not?

Mr. Cobb: No, your Honor, I don't think so, in this type of pleading.

Mr. Meyberg: As a matter of fact, I don't think there is an appeal anyhow, and even if there is, it would lie from the minute order as well as anything else.

The Court: I think the minute order is sufficient, there being no written order.

Mr. Cobb: But the minute order provided there should be a written order. That is the point, your Honor. Would your Honor correct the record then, because the way the record stands now if I went up on the minute order the Supreme Court would say: "Where is the written order required to be filed?"

The Court: You will have to take the record as it is. The entire proceeding, and the complexion of this case, makes the court extremely cautious about proceeding or making any order whatever. I am compelled to leave the record standing as it is. If the order was not correctly taken down by the clerk, there are ways of correcting it.

Mr. Meyberg: Yes, your Honor. May this record show the denial of all of the motions?

The Court: Yes. That is my understanding.

Mr. Cobb: May I submit an order on the denial, your Honor?

The Court: Ordinarily the prevailing party does that, if that is agreeable to Mr. Meyberg.

Mr. Meyberg: I don't believe a written order is necessary. I think the minute order is sufficient.

Mr. Cobb: I want a written order, your Honor, and I will be glad to prepare it.

Mr. Meyberg: If your Honor please, if a written order is necessary I will be glad to prepare it, of course.

The Court: I take no position in the matter. The court has functioned, and has made the minute order. That is as far as it goes. Mr. Meyberg can prepare the written order if he desires. He is the prevailing party. That is the custom of the court, and he may prepare the written order if he so desires. If not, then the minute order will stand.

State of California, County of Los Angeles, ss.

I, H. A. Dewing, being first duly sworn, do hereby certify and say that, on the twenty-sixth day of September, 1939, I was a duly qualified and acting shorthand reporter of the United States District Court in and for the Southern District of California, and that as such reporter and on the date above-mentioned I faithfully and correctly took down in shorthand writing all proceedings had and testimony given in a cause entitled M. E. Heiser v. Leonard Woodruff et al., No. 7256-C-Law, then on trial before Hon. George Cosgrave, a judge of said court, sitting in Los Angeles, California; that thereafter I caused said notes to be transcribed into typewriting and I certify that the foregoing transcript, numbered from 1 to 8, both inclusive, is a full, true, faithful and correct transcription of the Ruling and Remarks of the Court on Motion to Vacate Judgment and set aside Default on the above date.

Dated this 11th day of March, 1941.

H. A. Dewing,
Shorthand Reporter, United States District Court for the Southern District of California, Central Division.

Subscribed and sworn to before me this 11th day of March,

1941. G. M. Fox, Notary Public in and for the County of Los Angeles, State of California.

Objectors' Exhibit DD.

Objectors' Exhibit DD is a certified copy of the transcript of the record, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser. The designated portions of the said transcript of record appear in this record among the Heiser exhibits as follows:

C—Complaint (page 45).

D—Summons etc. (page 214).

E—Affidavit etc. (page 218).

F—Judgment (page 10).

G—Notice of motion to set aside default and judgment and motion to set aside default and judgment (page 219).

I —Reply in opposition to defendant Woodruff's additional points and authorities on motion to set aside default (page 227).

J—Minute order, June 8, 1939 (page 263).

M—Minute order, June 29, 1939 (page 274).

N—Notice of motion to vacate judgment etc. (page 275).

O—Affidavit of merits in support of motion to vacate judgment (page 278).

P—Affidavit of M. E. Heiser (page 281).

Q—Affidavit of Leonard J. Meyberg (page 284).

R—Clerk's minutes, September 26, 1939 (page 285).

S—Notice of appeal (page 286).

U—Statement of points relied on (page 289).

Objectors' Exhibit EE.

[Certified Copy of Appellants' Opening Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

The Orders Appealed From Are Appealable Orders. The Trustee in Bankruptcy Was a Proper Party to Move Under Section 60b to Vacate Default and Defend on the Merits. The Default Judgment is Invalid by Reason of Improper Service of Process, Improper Writ. Improper Service. The Judgment Was Prematurely Entered in That the Complaint Was Based Upon a Joint Liability on an Alleged Conspiracy and Judgment Was Entered as to One Defendant Prior to Trial of the Issues With Respect to Other Defendants. Judgment Should Have Been Vacated for the Reason That the Complaint Did Not State a Cause of Action. No Cause of Action Stated for Fraud. No Cause of Action for Conversion. No Cause of Action Is Stated for Interest From May 13th, 1929, and the Judgment, Therefore, is Erroneous. Plaintiff's Cause of Action is Barred by Laches and the Statute of Limitations. The Motion of the Trustee in Bankruptcy Should Have Been Granted Under Section 67 of the Bankruptcy Act. The Lower Court Abused Its Discretion in Denying the Motions of Appellants Under Section 60b of the Federal Rules of Civil Procedure. The Reopening for the Purpose of Receiving Evidence as to Value Only Was Improper.

Objectors' Exhibit FF.

[Certified Copy of Appellee's Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

The Orders Appealed From Are Not Appealable Orders. The Trustee in Bankruptcy Succeeded Only to the Rights of the Alleged Bankrupt Woodruff, Whose Motion to Set Aside Default and Judgment Had Been Denied by an Order Which Already Had Become Final Against Him. There Was No Improper Writ Nor Improper Service of Process. The Judgment Was Not Prematurely Entered Before Service of Process Upon Other Defendants, Because the Gist of the Action Is Not Joint Conspiracy But Fraud and False Representations, and Conversion. The Complaint States a Cause of Action for Fraud, for Conversion, and for Interest on the Value of the Gems Converted. There Is No Merit to the Defendant's Contention of Laches and Limitations, Particularly Where Delay in Service Was Due to Defendant's Concealment and Avoidance of Service. The Motions Denied Herein Do Not Come Under Section 67 of the Bankruptcy Act. The Lower Court Exercised a Wise Discretion in Denying Appellants' Motion. There Was No Reopening for the Purpose of Receiving Evidence as to Value, Nor Is This a Subject for Review Here.

Objectors' Exhibit GG.

[Certified Copy of Appellants' Closing Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of

Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

Orders Appealed From Are Appealable Orders. Rights of the Trustee. Invalidity of the Default Judgment. Impropriety of the Judgment. Complaint Fails to State a Cause of Action. Laches and Limitations. Applicability of Section 67d(2) of the Bankruptcy Act. Abuse of Discretion by Lower Court. Reopening for the Purpose of Receiving Evidence as to Value.

Objectors' Exhibit HH.

Complaint. (Promissory Note.)

In the Superior Court of the State of California in and for the County of Los Angeles.

Adolph Kosches, doing business under the fictitious firm name and style of Kosches Bros, Plaintiff, v. Golden State Gem Co., a Corporation, Defendant.

Plaintiff complains and alleges:

I.

That the defendant is a corporation, organized and existing under and by virtue of the laws of the State of California.

II.

That Adolph Kosches, the plaintiff, is doing business under the fictitious firm name and style of Kosches Bros., and has complied in all respects with the provisions of Section 2466 et seq. of the Civil Code of the State of California.

III.

That on the 18th day of December, 1928, at Los Angeles, California, the defendant, as such corporation, made, executed and delivered to the plaintiff its promissory note in writing, whereby it agreed to pay to plaintiff on March 18th,

1929, the sum of One Thousand and Seventy-Five ($1,075) Dollars, which note is, in words and figures, as follows:

$1075.00 Los Angeles, Cal. December 18th, 1928.

March 18th, 1929, after date, without grace, I promise to pay to the order of Kosches Bros. Ten Hundred seventy five and no/100 Dollars. For value received, with interest from date at the rate of no per cent per annum until paid. Principal and interest payable in Lawful Money of the United States, and in case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

GOLDEN STATE GEM CO.,
WALTER CALVIN SMITH, Pres.
(Signed)

726 San Pedro St.

Payable at 726 San Pedro St.

No. 2477. Due March 18th, 1929.

IV.

That said note provides, among other things, that in event suit was instituted to collect this note or any portion thereof, the defendant will pay such additional sums as the Court may adjudge reasonable as attorney's fees in said suit.

V.

That it has been necessary for plaintiff to employ, and he has employed Willebrandt & Horowitz as his attorneys for the purpose of bringing suit to collect said note, and that the sum of One Hundred Fifty ($150) Dollars is a reasonable sum to be allowed as attorney's fees in said suit.

VI.

That no part of said note has been paid, and the whole thereof is now unpaid.

Wherefore plaintiff demands judgment against defendant in the sum of One Thousand and Seventy-Five ($1,075) Dol-

lars, together with interest at seven per cent per annum from the 18th day of March, 1929, together with One Hundred Fifty ($150) Dollars attorney's fees, and for his costs incurred herein.

WILLEBRANDT & HOROWITZ,
By GIRARD F. BAKER,
Attorneys for Plaintiff.

[Verified.]

In this action the Defendant Golden State Gem Co., a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint, on file herein, and the time allowed by law for answering having expired, the default of said Defendant, in the premises is hereby duly entered according to law.

Attest: My hand and the seal of said Court, this Apr. 26, 1929.

L. E. LAMPTON, County Clerk,
(Seal) By J. F. RICE, Deputy.

[Summons.]

The People of the State of California Send Greetings to Golden State Gem Co., a corporation, Defendant.

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of

the County of Los Angeles, State of California, this 1st day of April, 1929.

L. E. LAMPTON,
County Clerk and Clerk of the Superior Court of the State of California in and for the County of Los Angeles.
By W. D. BUCKEY, Deputy.

(Seal Superior Court Los Angeles County.)

Notice.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, and filed with the clerk.

State of California, County of Los Angeles, ss.

R. H. Orr, being sworn, says: I am and was at the time of the service of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the time set opposite their respective names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Names of Defendants Served: Golden State Gem Co., a Corp., by Serving the Managing Agent Thereof, J. T. Carroll. Date of Service: April 11, 1929.

My Fees for Services are, $.50 for.....miles actually traveled at..... cents per mile, $.50. Total $1.00.

R. H. ORR.

Subscribed and sworn to before me this 19 day of April, 1929.

L. E. LAMPTON, County Clerk.
By .....Deputy.

Wilbur G. Smith, Notary Public in and for the County of Los Angeles, State of California.

Filed Apr. 26, 1929. L. E. Lampton, County Clerk. by J. F. Rice, Deputy.

Judgment by Default, by Court.

No. 275003.

In this action the defendant, Golden State Gem Co., a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff complaint filed herein, and the legal time for answering having expired, and no answer or demurrer having been filed, the default of said defendant, Golden State Gem Co., a corporation, in the premises having been duly entered according to law:

Now, on application of Willebrandt & Horowitz, by Girard F. Baker, attorneys for said plaintiff, it is hereby ordered, that judgment be entered herein against the said defendant, Golden State Gem Co., a corporation, in accordance with the prayer of said plaintiff complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that Adolph Kosches, plaintiff, do have and recover of and from the said defendant, Golden State Gem Co., a corporation, the sum of One Thousand and Seventy-Five ($1,075.) dollars, with interest thereon, at the rate of seven per cent. per annum from the date hereof until paid: together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of $16.75, all in gold coin of the United States, together with attorney's fees in the sum of One Hundred and Two and 50/100 ($102.50) Dollars.

And It Is Further Ordered, adjudged and decreed, that said plaintiff do have execution against the separate property of the defendant, Golden State Gem Co., a corporation, as well as against the joint property of all the said defendant.

Judgment rendered May 1st, 1929.

MARSHALL F. McCOMB, Judge.

Clerk's Office of the Superior Court, in and for the County of Los Angeles, State of California, ss.

I, the undersigned, Clerk of said Court, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action.

Attest my hand and the seal of said Court, this..... day of.....19.....

H. J. LELANDE, Clerk.
By .....Deputy Clerk.

Affidavit for Attachment Against Resident.
Section 538.

Adolph Koseches being sworn, says: I am the Plaintiff herein; that the Defendant herein is indebted to me in the sum of $1075.00, lawful money of the United States, over and above all legal setoffs and counter-claims, upon an express contract, for the direct payment of money, to-wit: Promissory Note, and that such contract was made or is payable in this State; and that the payment of the same has not been secured by any mortgage or lien upon real estate or personal property, or any pledge of personal property.

That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the said defendant, or any creditor or creditors of any or either of said defendants.

ADOLPH KOSCHES.

Subscribed and sworn to before me this 1st day of April, 1929. Girard F. Baker, Notary Public in and for the County of Los Angeles, State of California.

Objectors' Exhibit II.

Complaint.

(Promissory Notes and Moneys.)

In the Superior Court of the State of California, in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, v. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

Plaintiff alleges:

I.

That at all times herein mentioned the Golden State Gem Co. was and is now a corporation duly organized and existing under the laws of the State of California, with its principal place of business in the City of Los Angeles, State of California.

II.

That the Golden State Gem Co. of Nevada is a corporation duly organized under the laws of the State of Nevada, with its place of business in the State of California, located in the City of Los Angeles, State of California.

III.

That on the 20th day of January, 1928, the defendant Golden State Gem Co., a California corporation, made, executed and delivered to the Alphonse Jeddis Company two certain promissory notes, which said notes are in words and figures as follows, to-wit:

$500.00 Los Angeles, Cal., Jan. 20, 1928. Eighteen months after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 Dollars, with interest thereon at the rate of 6 per cent, per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at maturity and if not paid when it becomes due, to be added to the principal and become a part

thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.,
W. C. SMITH, Pres.,
C. E. BUCK, Secy.
(Seal) LEONARD WOODRUFF.

Address 726 San Pedro St., Los Angeles, Calif.

Phone ME-03-18

(Indorsed:)

Paid in full by Leonard Woodruff Apr 9th, 1929. Henry Haves, Attorney for Alphonse Jeddis Co.

$500.00 Los Angeles, Cal., Jan. 20, 1928 One year after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 Dollars, with interest thereon at the rate of 6 per cent, per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally, promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.
(Seal) LEONARD WOODRUFF.

Address 726 San Pedro St., Los Angeles, Calif.

Phone ME-0318.

(Indorsed:)

$350.00 paid by Golden State Gem Co., and $183.15 paid by Leonard Woodruff. Henry Haves, Attorney for Alphonse Jeddis Co., Apr 9, 1929.

IV.

That at the time of the execution and delivery of the said notes, the plaintiff signed same as an accommodation maker and indorser, at the request of the said Golden State Gem Co., of California, a corporation, upon its promise that it would pay said notes at maturity and the interest thereon as the same became due. That plaintiff received no consideration therefor.

V.

That said defendant Golden State Gem Co. of California, delivered said notes to the said Alphonse Jeddis Company to cover certain indebtedness due and owing to the said Alphonse Jeddis Company by the Golden State Gem Co. of California, a Corporation.

VI.

That the defendant Golden State Gem Co. of California, a Corporation, did not pay the aforesaid note due on January 20th, 1929, at its maturity, except the sum of $350.00, advanced by plaintiff, and plaintiff was thereupon compelled to, and did, on the 9th day of April, 1929 pay the balance due thereon, to-wit: the sum of $183.15 in discharge of said note, and that no part of the said sum has been paid to the plaintiff.

VII.

That on or about the 9th day of April, 1929, the said defendant Golden State Gem Co. of California, a Corporation, by and through its President W. C. Smith, notified and advised plaintiff that it would be unable to pay the aforesaid note for $500.00 due eighteen months after date, at its maturity, and requested plaintiff to pay the same in order to avoid a law suit and preserve the standing and credit of the said Golden State Gem Co. of California, a Corporation, and plaintiff did, at the instance and request of said Golden State Gem Co. of California, a Corporation, on the 9th day of

April, 1929, pay the sum of $536.25, principal and interest, in discharge of said note, and that no part of the said sum has been paid to the plaintiff.

VIII.

That plaintiff has been informed and believes, and upon such information and belief alleges that the defendant Golden State Gem Co. of Nevada has purchased the stock and assets of the Golden State Gem Co. of California and has received the benefits arising out of the execution and delivery of the aforesaid promissory notes and has agreed to assume the indebtedness due thereon and to pay the same; that plaintiff has made demand upon the said Golden State Gem Co. of Nevada for the payment of the said sum of *533.15
$183.15 and $536.25, but while admitting it assumed liability thereon, it has failed, neglected and refused to pay same.

*—Figures in italics appear in handwriting on original.

IX.

That demand has been made upon the said defendants for the payment of the aforesaid sums of $533.15 and $536.25; that the said defendants have failed, neglected and refused to pay the same or any part thereof, and there is now due, owing and unpaid from said defendants to plaintiff the sum of $1069.40, with interest thereon from April 9th, 1929.

For a Second Cause of Action against said defendants plaintiff alleges:

I.

Plaintiff hereby adopts the allegations of paragraphs "I" and "II" of plaintiff's First Cause of Action as if the same were fully set forth herein, and hereby refers to and makes the same a part of this Second Cause of Action.

II.

That on the 9th day of April, 1929, at the special instance and request of defendants, plaintiff advanced and paid the sum of $250.00 for and in behalf of said defendants as and for the rental of their store situated at 726-728½ South San Pedro Street, Los Angeles, California, covering

a period from March 1st, 1929 to May 1st, 1929, which said sum defendants promised to pay plaintiff on demand thereafter.

III.

That plaintiff has made demand upon said defendants for the payment of said sum of $250.00; that defendants have failed, neglected and refused to pay the same and there is now due, owing and unpaid from said defendants to plaintiff the sum of $250.00 with interest thereon from April 9th, 1929.

For a Third Cause of Action against defendants plaintiff alleges:

I.

Plaintiff hereby adopts the allegations of paragraphs "I" and "II" of plaintiff's First Cause of Action as if the same were fully set forth herein, and hereby refers to and makes the same a part of this Third Cause of Action.

II.

That on April 11th, 1929, at the special instance and request of said defendants, the plaintiff advanced and paid the sum of $32.34 for light and power furnished at their place of business, which said sum the defendants agreed to pay plaintiff on demand thereafter.

III.

That plaintiff has made demand on said defendants for the payment of the sum of $32.34, but defendants have failed, neglected and refused to pay the same, or any part thereof, and there is now due and owing from the said defendants to plaintiff the said sum of $32.34.

Wherefore, Plaintiff demands judgment. (1) For the sum of $1069.40 on Plaintiff's First Cause of Action. (2) For the sum of $250.00 and interest on Plaintiff's Second Cause of Action. (3) For the sum of $32.34 on Plaintiff's Third Cause of Action. (4) And for costs of this suit.

J. A. COLEMAN,
Attorney for Plaintiff.

[Verified.]

In this action the Defendant, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint, on file herein, and the time allowed by law for answering having expired, the default of said Defendant, in the premises is hereby duly entered according to law.

Attest: My hand and the seal of said Court, this May 10, 1929.

L. E. LAMPTON, County Clerk,
(Seal) By J. F. RICE, Deputy.

[Summons.]

The People of the State of California Send Greetings to:

Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

You are directed to appear in an action brought against you by the above named plaintiff.... in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff....will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 19th day of April, 1929.

L. E. LAMPTON,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

(Seal Superior Court Los Angeles County) By W. D. BUCKEY, Deputy.

Notice.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C.C.P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, and filed with the clerk.

State of California, County of Los Angeles, ss.

J. A. Coleman, being sworn, says: I am and was at the time of the servce of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the time set opposite their respective names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Names of Defendants Served—Date of Service:

Golden State Gem Co., a California corporation, by delivering copy of summons and complaint to Walter Calvin Smith, its president, on April 26, 1929.

Golden State Gem Co. of Nevada, a Nevada corporation, by delivering a copy of summons and complaint to Walter Calvin Smith, its president, on April 26, 1929.

My Fees for Services are, $.....for.....miles actually traveled at.....cents per mile, $..... Total.....

J. A. COLEMAN.

Subscribed and sworn to before me this 10th day of May, 1929.

L. E. LAMPTON, County Clerk.
By J. F. RICE Deputy.

.....

Notary Public in and for the County of Los Angeles, State of California.

Filed May 10, 1929. L. E. Lampton, County Clerk. By J. F. Rice, Deputy.

Affidavit for Attachment Against Resident
Section 538

State of California, County of Los Angeles, ss.

J. A. Coleman being sworn, says: I am the Attorney for Plaintiff herein; that the Defendants herein are indebted to plaintiff in the sum of $1069.40 lawful money of the United States, over and above all legal setoffs and counter-claims, upon an express contract, for the direct payment of money, to-wit: Payment of notes and money advanced, and that such contract was made or is payable in this State, and that the payment of the same has not been secured by any mortgage or lien upon real estate or personal property, or any pledge of personal property.....

.....

That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the said defendant, or any creditor or creditors of any or either of said defendants.

J. A. COLEMAN

Subscribed and sworn to before me this 19th day of April, 1929. Edward Fitzpatrick, Notary Public in and for the County of Los Angeles, State of California. (Seal).

[Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Company et al., appears at page 73.]

Execution.

In the Superior Court of the State of California in and for the County of Los Angeles.

The People of the State of California to the Sheriff of the County of Los Angeles,

Greeting: Whereas, on the 10 day of May, 1929, Leonard Woodruff, recovered a Judgment in the Superior Court of the County of Los Angeles against Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a

Corporation for the sum of $1676.22, together with $..... costs and disbursements, which Judgment was on the 11 day of May, 1929, entered in Judgment Book No. 739, at page 51 and the Judgment Roll was filed in the office of the County Clerk of the County of Los Angeles.

That there is now at the date of this writ actually due on the Judgment, the aggregate sum of $1676.22 as principal and costs with interest thereon as provided by law.....

.....

Now you, the said Sheriff, are hereby commanded to satisfy the Judgment with interest as provided by law, clerk's accruing costs amounting to $1.00 and your costs and disbursements out of the personal property of said debtor..... or if sufficient thereof cannot be found, then out of the real property belonging to said debtor..... on the day whereon the Judgment was entered or at any time thereafter, make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness, the Honorable Presiding Judge of the Superior Court of the County of Los Angeles, attested by my hand and the seal of said Court this 13 day of May, 1929.

(Seal) L. E. LAMPTON, County Clerk,
JAH By H. A. DOYLE, Deputy.

[Writ of attachment and sheriff's return on execution, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Company et al., appears at pages 74 to 76. The sheriff's returns on attachment, which form a part of objectors' exhibit H, set out the items listed in the writ of attachment which appears at pages 74 to 76.]

Memorandum of Costs and Disbursements Claimed by Plaintiff.

In the Superior Court of the State of California in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

* * * * *

Miscellaneous Items of Costs: .....

29 United States National Bank for storage on gems $150.00

$1451.40 Los Angeles, Cal., 5/18 1929

Received of

Wm. I. Traeger, Sheriff of Los Angeles County, Fourteen hundred and fifty one 40/*10* ..... Dollars, in United Staes Gold Coin, being the amount of sale of Res Prop in the case of Woodruff vs Golden No. 276469 Superior Court, County of Los Angeles, after deducting Sheriff's costs and disbursements, amounting to $48.60

J. A. COLEMAN,
Plaintiff's Attorney

Objectors' Exhibit JJ.

Cancelled by Judgment This 10 Day of May 1929. L. E. Lampton, County Clerk. By (Illegible signature), Deputy.

$500.00 Los Angeles, Cal., Jan 20, 1928

One Year after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no 100 ..... Dollars, with interest thereon at the rate of 6 per cent. per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at Maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest

at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally, promise to pay all costs of collection and reasonable attorney's fees:

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.

Address 726 San Pedro St., Los Angeles, Calif. Phone Me-0318.

LEONARD WOODRUFF
2436 Inverness St. Los Angeles

[On reverse.]

$350.00 paid by Golden State Gem Co and $183.15 paid by Leonard Woodruff

HENRY HAYES, Attorney for
Alphonse Jeddis

Apr 9, 1929.
(Seal)

4/9/29 (Illegible) Int

Cancelled by Judgment This 10 Day of May 1929. L. E. Lampton, County Clerk. By (Illegible signature), Deputy.

$500.00. Los Angeles, Cal., Jan 20, 1928

Eighteen Months after date, for value received, I, we, or either of, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 ..... Dollars, with interest thereon at the rate of 6 per cent. per annum from date until paid: principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at Maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and sev-

erally, promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.

Address 726 San Pedro St. Los Angeles, Calif., Phone Me-03-18

LEONARD WOODRUFF
2436 Inverness St. Los Angeles

[On reverse:]

Paid in full by Leonard Woodruff Apr 9th 1929

HENRY HAYES, Attorney for
Alphonse Jeddis Co.

(Seal)

Woodruff vs. Golden State Gem Co.
276469

Plaintiff's Exhibit 1 Filed May 10 1929 L. E. Lampton, County Clerk By (Illegible signature) Deputy.

Objectors' Exhibit KK.

Complaint Promissory Note

In the Superior Court of the State of California in and for the County of Los Angeles.

Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, Plaintiffs, vs. Golden State Gem Co., Inc., a corporation, Defendant.

Come Now Plaintiffs, and for cause of action against defendant, complain and allege as follows:

I.

That the plaintiffs are now, and at all the times herein mentioned were co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, and have complied with the law relative to the filing and publication of fictitious firm name designation.

II.

That the defendant is a corporation, and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California.

III.

That on or about the 15th day of October, 1926, the defendant made, executed and delivered to the plaintiffs herein that certain promissory note in words and figures as follows, to-wit:

"$2654.67 D 1959 Los Angeles, Oct. 15th, 1926.

Six months (without grace) we promise to pay to the order of Alphonse Jeddis Company Twenty six hundred and fifty four and 67/100 Dollars for value received; payable only in United States Gold Coin.

GOLDEN STATE GEM CO., INC.,
E. DAVOIL—Vice-Pres. (Sd)
C. E. BUCK—Treas. (Sd)

Payable at 726 Sa. Pedro St., No. 715 Due April 15th. 1927. 39484"

That nothing has been paid upon account of the same, except the sum of Five Hundred Dollars ($500.) April 22, 1927; the sum of One hundred fifty Dollars ($150.) June 20, 1927; One hundred Dollars ($100.) June 21, 1927; the sum of One hundred Dollars ($100.) August 5, 1927; and the further sum of One hundred Dollars ($100.) August 8, 1927; leaving a balance due upon said promissory note in the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67).

IV.

That although said balance has been duly demanded, the said defendant has failed and refused, and still fails and refuses to pay said sum, or any part thereof, and there is now due, owing and unpaid from the defendant to plaintiffs herein the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), no part of which has been paid.

Wherefore plaintiffs pray judgment as follows:

(a) For the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), with interest thereon at the rate of seven percent (7%) per annum.

(b) For costs of suit.

HENRY HAVES
Attorney for plaintiffs.

[Verified.]

Judgment

Partly satisfied by Sheriff, 1/20/28—amt. collected $19.25 L. E. Lampton, County Clerk By A. R. Groenke, Deputy.

*Words and figures in italics appear in handwriting on original.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, Plaintiffs, vs. Golden State Gem Co., Inc., a corporation, Defendant. No. 235037.

The Above entitled cause came on regularly for trial in Department 7 of the above entitled Court, before Hon. Thomas C. Gould, sitting as judge of said department, on the 21st day of December, 1927, at the hour of 2:00 o'clock P. M. of said day, Henry Haves, Esq., appearing as attorney for plaintiffs, and John R. Barta, Esq., appearing as attorney for defendant, and evidence having been introduced on the part of plaintiffs, and counsel for defendant having stipulated in Open Court that the plaintiffs have judgment as prayed for in the Complaint, in the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67) with interest thereon at the rate of seven percent (7%) per annum from the 30th day of September, 1927, amounting to the sum of Twenty-nine and 83/100 Dollars ($29.83), and the matter having been submitted to the Court for decision, and in accordance with the findings of fact and conclusions of law the Court orders judgment as follows:

It Is Hereby Ordered, Adjudged and Decreed that the

plaintiffs Alphonse Jeddis and Frank L. Jeddis do have and recover of and from the defendant the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), with interest thereon at the rate of seven percent (7%) per annum from September 30, 1927 amounting to the sum of Twenty-nine and 83/100 Dollars ($29.83), and plaintiffs' costs and disbursements taxed in the sum of $.....

THOMAS GOULD, Judge.

(Illegible signature) Jan 4, 1928

$19.25 Los Angeles, Cal., 1/20 1928

Received of

Wm. I. Traeger, Sheriff of Los Angeles County,

Nineteen 25/100.....Dollars in United States Gold Coin, being the amount of sale of personal property in the case of Jeddis vs. Golden, No. 235-037 Superior Court, County of Los Angeles, after deducting Sheriff's costs and disbursements, amounting to $5.75.

HENRY HAVES,
Plaintiff's Attorney.
By GEORGE W. ANNS.

No. 235-037.

Sheriff's Return on Execution.

State of California, County of Los Angeles, ss:

I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution by me received on the 10 day of Jan. A. D. 1928, I did on the 11 day of Jan. A. D. 1928, levy upon the personal property hereinafter described and noticed the same for sale as the law directs (by posting written Notice of the time and place of sale) particularly describing the property for six days successively in three public places in the Township or City where said property was sold, and on Fri. the 20 day of Jan., 1928, at 9 o'clock A.M. of said day, I did attend and offered for sale at

Public Auction, for United States Gold Coin, the property described.

1—strand of 88 beads:

50 white and green metal wedding rings

3 carved heads

2 pink stones

1 green stone cross

10 oval green stones

17 karats of blue stones (small)

6 karats of blue stones (large)

2 strands carved white beads

2 strands of large amber beads

10 white metal and white stone set rings

19 karats blue stones (cut).

At—Broadway Entrance to Courthouse, in the city and county of Los Angeles.

and sold the whole of the same in one separate parcels to Alphonse Jeddis and Frank L. Jeddis purchaser for the sum of Twenty-five Dollars in United States Gold Coin; said purchaser being the highest bidder and said sum being the highest bid, in the aggregate for the same. And I further certify that I deducted from the said sum of $25.00 my fees, commissions and expenses, amounting to the sum of $5.75 leaving a net balance of Nineteen 25 100 $19.25, which I have paid to Plaintiff's Attorney, whose receipt therefor is hereto attached, and I hereby return the annexed writ positively satisfied.

Dated Fri., this 20 day of Jan., A. D. 1928.

WM. I. TRAEGER,
Sheriff of the County of Los Angeles.
By GEO. S. BARTON,
Deputy Sheriff.

Sheriff's Office.

County of Los Angeles.

I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution, by me received on the 10 day of January, 1928, I did, on the 11 day of January, 1928, attach the following described personal property in the possession of E. Bastheim & Company but belonging to defendant, viz.: one sealed box of merchandise containing the following:

1 strand of 88 beads

50 white and green metal wedding rings

3 carved heads

2 pink stones

1 green stone cross

10 oval green stones

17 karats of blue stones (small)

6 karats of blue stones (large)

2 strands carved white beads

2 strands of large amber beads

10 white metal and white stone set rings

19 karats blue stones (cut)

All of said property located at fourth floor, Title Guaranty Building, Fifth & Broadway, in the City of and County of Los Angeles, State of California,

and attach the same by taking into my possession and putting a keeper in charge.

WM. I. TRAEGER, Sheriff.
By L. W. GRATZ, Deputy Sheriff.

Dated.....day of January, 1928.

Execution.

In the Superior Court of the State of California
in and for the County of Los Angeles.

The People of the State of California to the Sheriff of the County of Los Angeles, Greeting:

Whereas, on the 4th day of January, 1928, Alphonse Jeddis and Frank L. Jeddis, recovered a Judgment in the Superior Court of the County of Los Angeles against Golden State Gem Co., Inc., a corporation, for the sum of $1704.67, together with interest of $29.83 $..... costs and disbursements, which Judgment was docketed on the 6th day of January, 1928, entered in Judgment Book 676, at page 76; and the Judgment Roll was filed in the office of the County Clerk of the County of Los Angeles.

That there is now at the date of this writ actually due on the Judgment, the aggregate sum of $1734.50 as principal and costs with interest thereon as provided by law.

Now you, the said Sheriff, are hereby commanded to satisfy the Judgment with interest as provided by law, clerk's accruing costs amounting to $1.00 and your costs and disbursments out of the personal property of said debtor....or if sufficient thereof cannot be found, then out of the real property belonging to said debtor.... on the day whereon the Judgment was docketed, or at any time thereafter, make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness, the Honorable Presiding Judge of the Superior Court of the County of Los Angeles, attested by my hand and the seal of said Court, this 10th day of January, 1928.

L. E. Lampton, County Clerk.
(Seal) By I. Fuxder Burgh, Deputy

Objectors' Exhibit I.I.

Complaint for Damages, Fraud and Conversion.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., defendants. No. 5587-J.

Plaintiff above named complains of defendants above named, and each of them and for cause of action alleges that:

[Paragraphs I to XV(2) are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern Distret of California, Heiser v. Woodruff et al., which complaint appears at page 45.

[The first paragraph of paragraph XV(2) is substantially identical with that paragraph of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

That on or about the 19th day of April, 1929, and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al, No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same had not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff. That at the

time of making of said sworn statement, and affidavit, the said defendants and each of them well knew that defendant Woodruff had in his possession and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of whatsoever nature had been had and the said merchandise and collateral was at that time and ever since said time as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of Ten Thousand ($10,000.00) Dollars and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States National Bank as aforesaid were the property of the plaintiff herein, did cause the said raw *gems*, the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929.

[The remaining paragraphs of XV(2) are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

[Paragraph XVI is substantially identical with that paragraph of the complaint in case No. 7256-C, United States

District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

XVII.

That defendants Woodruff and Smith since May 13, 1929, have been outside of the State of California and outside the jurisdiction of this Honorable Court for a period of three months and more, as plaintiff is informed and believes and therefore alleges. That plaintiff herein discovered the fraud herein in and about the month of April, 1932, in that plaintiff at said time discovered how and in what manner the raw gems of plaintiff herein had been removed and obtained by defendants.

[Paragraphs XVIII to XX are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Wodoruff et al., which complaint appears at page 45.]

For a Second, Separate and Further Cause of Action by Plaintiff Against Said Defendants and Each of them, Plaintiff Alleges That:

I.

Plaintiff reincorporates and realleges each and every allegation, matter of fact contained in Paragraphs I to XX, inclusive, of his first cause of action.

II.

As a direct and proximate result and consequence of the fraudulent and deceitful conduct of said defendants as hereinbefore alleged, and in consummation of their said fraudulent conspiracy, the said raw gems of plaintiff aforesaid, were seized by defendants and so were lost to plaintiff herein to his great damage in the sum of one hundred sixty-four thousand ($164,000.00), dollars.

III.

And further, as a direct and proximate consequence of the fraudulent and deceitful acts and conduct of the defendants, as hereinbefore alleged, plaintiff lost valuable rights and profits on the said leases aforesaid in the sum of one hundred thousand ($100,000.00) dollars.

[Paragraph IV is stricken from the certified copy of objectors' exhibit LL.]

For a Third, Separate and Further Cause of Action by Plaintiff Against the Said Defendants and Each of Them Plaintiff Alleges That:

I.

Reincorporates and realleges each and every allegation, matter of fact contained in I to III inclusive, of his second cause of action.

[Paragraphs II to IV are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

[Verified.]

Filed May 11, 1932, R. S. Zimmerman, Clerk. By Edmund P. Smith, Deputy Clerk.

A True Copy, Attest, etc. Oct. 8, 1940. R. S. Zimmerman, Clerk U. S. District Court, Southern District of California. By C. C. Hollister, Deputy.

Objectors' Exhibit MM.

Order Re Motion to Vacate Judgment.

United States District Court, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff et al, Defendants. No. 5587 J.

Plaintiff filed his complaint on May 11, 1932, wherein he sought judgment against a number of defendants on account of an alleged fraud involving the conversion of property. On the same day a praecipe was filed with the clerk for the issuance of summons and summons was accordingly issued. No other action on the part of the plaintiff to prosecute his cause is shown on record as for the year following: On June 12, 1933, pursuant to provisions of the last paragraph of Rule 4 of this Court, the Clerk placed the matter on the calendar for dismissal and judgment of dismissal was entered

on June 13, 1933. Ten months later (two term dates having passed in the interim) plaintiff presented his exparte motion to vacate the order of dismissal and filed an affidavit in connection therewith made by a Deputy Marshal. The affidavit showed that the Marshal's office had received the summons in May, 1932, and had made numerous attempts to serve the defendant Woodruff and had failed to secure service, the information contained in the affidavit indicating that said defendant was concealing himself to avoid service. The affidavit concluded with the statement that it would be useless effort on the part of the Marshal's office to make further attempts to serve the defendant and suggested that plaintiff obtain an order authorizing a private person to make the service. While it is not important to the law question presented for consideration at this time, it may be observed that the plaintiff did not make any further attempt to serve the defendant Woodruff for more than a year after the order was made vacating the judgment of dismissal. The record shows that it was only on May 28, 1935, that order of the Court was applied for and secured permitting the service of summons to be made by a private individual.

Defendant Woodruff now moves to vacate the order of April 25, 1934, which purported to set aside the Dismissal of the cause as made under the provisions of Rule 4 on June 13, 1933. Defendant contends that as the judgment of dismissal was final in form, the court had no jurisdiction to vacate it after the term had passed, citing particularly the case of Dillon vs. U. S., decided by the Ninth Circuit Court of appeals and reported in 29 Fed. (2d) p. 246. The position taken by the plaintiff is that the court when it entered the dismissal under Rule 4 acted through a mistake of fact: that had the court been advised that efforts had been made to serve the summons on Woodruff without success and that such efforts had been repeated and persistent, the dismissal would not have been ordered.

The rule of Court (Rule 4) provides:

"Causes which have been pending in this court for more than one year without any proceeding have been taken there (in) during such year, may be dismissed for want of prose-

cution, by the court on its own motion, at a calling of a calendar prepared for the purpose of the Clerk."

It will be noted that the court in making a dismissal under the rule mentioned acts upon the record before it and that that record in order to bar dismissal contemplates that there shall have been some proceeding taken in court during the year. There was no proceeding taken in court in this case. There are a number of defendants mentioned in the caption all charged jointly with the defendant Woodruff and none of them were served with a summons; neither does it appear that there was any effort to make such service. Members of the bar of the court are required to take notice of the rule and to assume that dismissal will follow as a consequence upon the record showing no action in a cause for the time specified. Even though the fact had appeared that efforts had been made to serve one defendant only and that such effor had failed, the court would not necessarily have withheld its order of dismissal. The dismissal even in that case would have been in strict conformity with the rule.

The case of Dillon vs. U. S., supra, is quite exactly in point, as counsel for defendant Woodruff contends. There a summons had been issued and no further proceedings appearing of record for one year following, dismissal was ordered under a rule of the Northern District of California, which is in terms precisely like that included in Rule 4 of this court. The plaintiff in a term of court subsequent to that wherein dismissal was ordered moved to vacate that order. It was shown that the summons was not returned because there had been negotiations with counsel for the United States and certain stipulations between counsel as to time to answer; that the parties were awaiting the determination of some other case then on appeal which involved similar questions. The trial court denied the motion to vacate the judgment of dismissal and the Court of Appeals affirmed that order, reaffirming the established rule that a judgment final in form when once entered may be vacated or modified only during the current term of court: The court there stated:

"Rule 76 is intended to confer upon the court the power to clear its calendar of cases which are not diligently prosecuted. It would be futile, if the exercise of such power were

dependent or conditioned upon the desires of counsel for litigants. The court may ignore stipulations of record, and a fortiori mere oral understandings of counsel."

In that case it might be said that there was ample excuse in favor of the plaintiff for not having taken further proceedings in court. He relied upon the stipulation of Government's counsel and that counsel joined with him in consenting to have the dismissal set aside. All of this was of no avail; the term had passed and the jurisdiction of the court was lacking to make a vacating order. The decision is controlling of the question now presented. It follows that the order of April 24, 1934, vacating the judgment of dismissal entered June 13, 1933, must be set aside because of lack of jurisdiction in the court to make such order. It likewise follows that the service of summons on defendant Woodruff as it has recently been made must be quashed.

It Is So Ordered and an Exception Is Noted in Favor of the Plaintiff.

Dated July 9, 1935.

WM. P. JAMES,
U. S. District Judge.

Filed July 9, 1935. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

Objectors' Exhibit NN.

Reporter's Transcript of Proceedings in Re: Objection to Claim of M. E. Heiser.

In the District Court of the United States, Southern District of California, Central Division.

Before Hon. Earl E. Moss—Referee.

In the Matter of Golden State Gem Company, Bankrupt. No. 13393-J.

Los Angeles, California. Wednesday, April 14, 1932. Friday, April 22, 1932

Appearances: Robert L. Beveridge, Esq., for Hubert F. Laugharn, Esq., Trustee. Francis B. Cobb, Esq. and Ed

ward Fitzpatrick, Esq., for Leonard J. Woodruff, Creditor. Leonard J. Meyberg, Esq., for the Claimant, M. E. Heiser.

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* * * * *

M. E. HEISER, called as a witness on invitation of the Referee, being first duly sworn, testified as follows:

Direct Examination.

By the Referee:

Q. You are the claimant in this matter?

A. Yes, your Worship.

Q. Now, will you start with your first negotiations for the delivery of these sapphires and zircons—what was it, sapphires entirely?

A. No, sapphires and opals and jades, your Worship.

The Referee: Relate just what occurred?

A. Starting in July, 1928, I came to the Golden State Gem Company of California and I met Mr. Calvin Smith. I just arrived from Australia, your Worship, had been out on a three-year mining campaign and I asked Mr. Smith was he in the market for any gems.

Q. That was in the place of business of the Golden State Gem Company?

A. Yes, and I sold him—

Q. And what did he say when you asked if he was in the market?

A. He said he was in the market and he said he could not purchase them, he didn't have the money, he didn't have the cash but he said his backer would if I went with him to his place, and we went to Mr. Woodruff's home and I showed Mr. Woodruff the gems Mr. Smith had selected from my various parcels—

Mr. Meyberg: Pardon me. Those are not the gems in controversy?

A. No. His Worship asked me to tell what happened.

Mr. Meyberg: I just wanted him to understand that.

A. I went up with Mr. Smith and showed the gems to

Mr. Woodruff and Mr. Woodruff said they were fine and good and could be used in some partnership arrangement they had. I was not interested in that. I was more interested to get my money. I sold the stuff and got the check from Mr. Woodruff for it. Then Mr. Smith told Mr. Woodruff, said I had just come from Australia and we were discussing the matter and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived. Mr. Woodruff was very much interested and Mr. Smith said "You know with your money and my 2,000 customers, which are some of the richest men in America, and with Heiser's stock here we could make a wonderfully-fine business," and that was what I was looking for because I was a rough producer. Mr. Woodruff said he thought it was a good idea and would like to see the gems if I would bring them up. After several days going back and forth he asked me to go down and see a lawyer of Mr. Smith's Mr. Beveridge, in Rohe and Freston's—

Mr. Meyberg: Mr. Beveridge, you say?

A. No, Mr. Barstow, pardon me, I am awfully sorry. Mr. Barstow checked me up on my past credentials, writing up to my references and getting information on my mine in Australia. After Mr. Barstow was satisfied he apparently communicated with Mr. Smith who in turn took me to Mr. Woodruff. He was apparently satisfied. He said "There is a company being operated, the Golden State Gem Company of California," and Mr. Woodruff said "All right, if you will place the gems up into the Golden State Gem Company and Calvin Smith is satisfied with them I will pay up the debts of the Golden State Gem Company of California, all debts and I will put Mr. Smith back on his feet again, and I will also"—

The Referee: Smith was there all the time?

A. Oh yes, all the time then.

Mr. Beveridge: I move the portion of the witness' testimony with reference to what Mr. Woodruff said be stricken as purely hearsay.

The Referee: Not in the presence of Mr. Smith?

The Witness: Mr. Woodruff was there.

The Referee: It is not hearsay.

Mr. Beveridge: It is hearsay in so far as no proper foundation is laid showing Mr. Smith; it is indefinite as to time and place.

The Referee: That is true of course, but we are just saving time by calling Mr. Heiser at this time.

A. It was on or about the 30th of July, 1928, your Worship.

The Referee: All right, proceed.

A. I can give you the exact date.

Mr. Meyberg: Mr. Heiser, all right, go ahead.

A. Well, Woodruff emphasized to me Mr. Smith would be put on his feet again and he told me, "Mr. Heiser, if you fetch those gems up I will put Mr. Smith on his feet and pay all the debts of his company."

Mr. Beveridge: I move to strike that out.

The Referee: Yes.

A. And he said all of Mr. Smith's debts also because he liked Calvin and because he thought he was a wonderful fellow, a good business man, and he thought with him and my gems we would make a very strong organization, and I would have no more trouble on the end of getting a distribution of gems.

I brought the gems up and they left San Francisco on or about the 9th of August. They arrived in this city and were transferred into the United States National Bank on the 13th of August, with Mr. Smith to have access to them, myself, and if Mr. Woodruff needed he could have access to them in the name of the Golden State Gem Company of California, your Worship. The other company was not formed at that date.

Mr. Woodruff and I and Mr. Smith met the next day and Mr. Woodruff said "Mr. Heiser, you have kept your deal and all the debts of the California Company are cancelled

and here is a check to show I am going to play with you boys," and he gave Mr. Smith some checks for $9,000 to pay all the debts of the company, and Mr. Smith received those checks for the express purpose of paying all the California Company debts so the California Company was free of its debts.

The Referee: What is your conclusion.

A. No.

Q. Well, what did he say?

A. He said "I will clear all the debts of the California Company and we will put all the assets of the California Company into the Nevada Company." For his consideration he was to get two-thirds of Mr. Smith's shares, or led me to believe he had in the company and I was to get the other. Mr. Smith and he was to be fifty-fifty on one end of the company and I was to be the other half on the new application or in the new Nevada Company.

Mr. Barstow then proceeded to get the papers on from Nevada and I think they arrived on the 15th, a few days after the gems arrived. Nothing was consummated until I placed my gems in the California Company name in the United States National Bank on Eighth and Spring Street, your Worship.

The Referee: Now, did you have any written transactions with Mr. Smith or Mr. Woodruff, in writing?

A. I couldn't say how many documents there were prepared I signed, but Mr. Smith kept one set and Mr. Barstow or Mr. Woodruff got the other. I didn't take them because I was on my way to Europe. I left for Europe just after that and I didn't know what happened until I got there and I was making an arrangement for the getting of the rough material for the Golden State Gem Company.

Q. You signed a number of papers but you do not have copies of them?

A. No. Mr. Smith was looking after that end, and Mr. Barstow had the rest on file.

Q. Well, when you brought those stones up here you put them over in the United States National Bank. Was

the box under joint control or individual control of any of you three gentlemen?

A. Each one had access to it, and it was in the name of the Golden State Gem Company.

Q. And it was individually controlled for yourself, Woodruff or Smith?

A. Yes. They was supposed to be my property until they were turned over to the Nevada Company. The only thing I was to receive for my stock of gems was shares in the Nevada Company but there was nothing ever passed to the Nevada Company, your Worship. They kept everything to themselves and they gave me paper in a worthless company that never functioned.

Q. And did they give you the stock in the Nevada Corporation?

A. Some shares, yes, in the Nevada Company. Not all of it.

Q. What became of these stones?

A. Mr. Woodruff took them, your Worship, from the bank on one of the debts he was supposed to pay and he gave Mr. Smith the money in my opinion to pay it. He gave Mr. Smith $9,000 odd to pay the debts and when I came back I found my gems were taken out of there to apply on debts Mr. Smith should have paid. I didn't know until last week when Mr. Meyberg, the attorney, told me, and they didn't seem to make any progress in it. Not until Mr. Meyberg went into investigating in the Hall of Justice last week did I know.

The Referee: Mr. Woodruff sued you?

A. No.

Q. He sued the Nevada Company?

A. The California and Nevada Company, your Worship, I think—I am not positive. I just glanced over the record. It is yonder there.

Mr. Meyberg: May it please the Court, I have the file in that case. Perhaps the Court could read this whole complaint and better understand the whole picture. It is very interesting.

Mr. Beveridge: It is stipulated between counsel that

that file shows the manner in which the property went out of the possession of the United States National Bank?

Mr. Meyberg: I couldn't say as to that. I will stipulate that file may go in evidence.

The Referee: The complaint first alleges and shows on the face of it the default of the Golden State Gem Company of California and the Golden State Gem Company of Nevada. It shows the execution of some promissory notes signed by the Golden State Gem Company in favor of Jeddis, each for $500, signed by Leonard Woodruff also.

Mr. Meyberg: May it be noted the one note of $500 is dated January 20, 1928 and was not due until eighteen months after date, or on July 20, 1929, but the suit was filed in April, 1929, and the default judgment was taken in May, 1929.

The Referee: Yes, and the interest is payable at maturity.

Mr. Meyberg: At maturity. Further, may it please your Honor, if I may call your attention to paragraph eight on page four of that complaint, which is the only allegations in which they attempt to tie into the company.

The Referee: Yes. It shows in the file among other things, the levying of a writ of attachment on April 19, 1929 on 4,000 pounds more or less of rough sapphire stones and 1,000 ounces more or less of zircon stones, located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

Mr. Beveridge: Is that an execution or attachment?

The Referee: The document just read is the attachment. Here is a return on execution dated May 18, 1929 certifying that on that date there was sold 35 sacks said to contain uncut sapphires, sold to Leonard Woodruff for the sum of $1,000 at Los Angeles Warehouse, 316 Commercial Street, in the City and County of Los Angeles.

Mr. Meyberg: Apparently to where it was removed.

The Referee: One sack said to contain uncut sapphires sold to Irving Zachs for $150 at the same warehouse. I

don't see anything further material about this file. There may be, however.

Mr. Meyberg: I will leave that.

The Referee: That is all the questions I have.

Mr. Beveridge: Are you satisfied with the general statement, Your Honor?

The Referee: I am not expressing any opinion on the evidence. You may cross examine, or his own counsel may examine him first.

Mr. Meyberg: I would like to examine him but possibly it would save time by examining him after Mr. Beveridge is through.

Mr. Beveridge: I would like to cross examine him, your Honor.

The Referee: Proceed, Mr. Beveridge.

Cross Examination.

By Mr. Beveridge:

Q. Mr. Heiser, you stated that your first notice that these gems were not in the possession of the United States National Bank was through your present attorney?

A. I didn't say that at all. I said the first notice I had or knew what had happened to those gems was through my attorney when he went to the Hall of Records and found what happened to them.

Q. Did you confer with an attorney named Leo Goodman with regard to this?

A. Mr. Smith took me to this attorney, Mr. Leo Goodman, and he wanted me—

Q. Pardon me, but—

A. You asked me and I am answering. Don't confuse me. They wanted this gentleman to get forty per cent and they wanted more cash and I couldn't pay them. They billed around $1200. Now, you wanted to know and I have it in writing.

Q. Did you understand my question?

A. Yes, and I answered it.

Q. Did you ever propose to file suit against Leonard Woodruff on this claim?

A. I never proposed anything.

Mr. Meyberg: That is calling for the conclusion of the witness.

The Referee: Yes, the expression "propose to file suit" does call for the conclusion of the witness.

Mr. Beveridge: Q. Did you ever employ counsel to bring suit on this claim?

A. Not to file suit, no. I asked him to try and see what my position was in the case.

Q. And at that time that was the first part of this year or last year?

A. Last year, yes sir.

Q. Did you make a statement of the facts to your counsel in my presence?

Mr. Meyberg: Just a minute. That is objected to as being incompetent, irrelevant and immaterial, may it please the Court, and also a privileged communication.

The Referee: This is preliminary now, if he made the statement. After that is ascertained then before he goes into the question of what the statement was you may make your objection.

A. I discussed with you or Mr. Cohen of San Francisco and Mr. Goodman several things pertaining to both this bankruptcy suit which you gentlemen led me to believe I had a claim in, and also told me I had a big suit against Mr. Leonard Woodruff.

Mr. Beveridge: If you will confine your answers to my questions, Mr. Heiser. You understood the question. Will you read the question to Mr. Heiser so he will understand it?

(The reporter read the pending question as follows: "Q. Did you make a statement of the facts to your counsel in my presence?")

A. Yes I did, sir.

Q. And was that statement taken down by his secretary in shorthand?

A. Not to my knowledge.

Q. Did you ever see a reproduction of that statement written up?

A. Not that I recollect.

Q. Do you recollect ever having asked Mr. Goodman to have me furnished with a copy of that by you?

A. I do not. Mr. Cohen might have had, my lawyer in San Francisco.

Q. Well, I will ask you to examine this document here which consists of eight pages of typewritten matter, statement of Mr. Heiser

Mr. Meyberg: Pardon me. May I see the document you are going to present to the witness?

Mr. Beveridge: I am just asking him a question before I offer it.

Mr. Meyberg: I would like to see it before that.

Mr. Beveridge: Very well.

Mr. Meyberg: What is the question?

Mr. Beveridge: Asking him to examine this carefully and state if he is able to at this time according to his best independent recollection if that is a copy of a statement that he made at the time in question.

Mr. Meyberg: Objected to as being incompetent, irrelevant and immaterial, not the proper way to impeach the witness if it was a communication passed between the client and counsel establishing a privileged communication.

The Referee: Thus far he is only asking to identify it and the question is preliminary.

A. No, I cannot identify this. I cannot identify this document at all.

Mr. Beveridge: Nothing that is stated in there was said by you at that time?

Mr. Meyberg: Just a minute—

A. Well, no.

Mr. Meyberg: —that is objected to as incompetent, irrelevant and immaterial, no foundation laid and a privileged communication between client and counsel.

The Referee: Sustained on the ground there is no foundation laid, the witness having failed to identify the document.

A. I cannot identify that document, your Worship. Did Mr. Smith's lawyer write it up?

Mr. Beveridge: No, your lawyer I guess wrote it up.

Mr. Meyberg: I move to strike the statement of Mr. Beveridge.

Mr. Beveridge: It is an answer to the witness' question.

Mr. Meyberg: As immaterial and not proper conduct.

The Referee: It is not evidence anyway. Stricken out.

Mr. Beveridge: Q. Now, Mr. Heiser, you stated that the gems you furnished were to be your property until you got your stock in the new company?

Mr. Meyberg: What is the question?

(The reporter read the pending question.)

Mr. Beveridge: Is that a fact?

Mr. Meyberg: That is assuming a fact not in evidence. The witness did not so state. The witness stated he deposited these gems to show good faith and Mr. Woodruff was to put up the money.

The Referee: The question is not cross examination and it is not proper to reiterate the witness' statement.

Mr. Beveridge: I was laying the foundation for further questions.

The Referee: Objection overruled.

A. What is the question again?

(The reporter read the pending question as follows: "Q. Now, Mr. Heiser, you stated that the gems you fur-

nished were to be your property until you got your stock in the new company?"

A. Yes.

Mr. Beveridge: Q. And where were you when this property was shipped to Los Angeles?

A. In Los Angeles.

Q. Who handled the consignment and shipment?

A. My brother-in-law, E. A. Lobree.

Q. Under instructions from you?

A. Yes.

Q. What were your instructions with reference to how it was to be consigned?

A. To M. E. Heiser, care of Golden State Gem Company.

Q. Were you in Los Angeles and received it?

A. I was.

Q. At that address?

A. No, we received it at the United States National Bank, Spring Street.

Q. Then what happened?

A. They were taken down to the bank and Mr. Smith inspected them.

Q. You inspected them?

A. Mr. Smith and I, and they were just left there for safe keeping in the vault.

Q. Under whose name?

A. Golden State Gem Company.

Q. Of Nevada?

A. No, sir. The Nevada Company wasn't formed then. There was no such thing as the Nevada Company at that date.

Q. Do you know whether or not the Golden State Gem Company of Nevada had an account in the United States National Bank?

A. At a later date.

Q. At that time?

A. At that time to my own knowledge it did not.

Q. You are quite positive?

A. As positive as I can be.

Mr. Meyberg: He has stated—

Mr. Beveridge: You just testified it was the old company. Now, I want to know what he bases his answer on.

Mr. Meyberg: I move to strike the answer on the ground it is purely a conclusion of the witness and not the best evidence.

The Referee: Motion denied.

Mr. Beveridge: Q. Was the new company formed when this merchandise was shipped?

A. No, when the stuff was shipped the company was not formed. The papers were not even sent away then. The company was formed on the 11th of August and the stuff was shipped on the 9th day of August.

Q. When was it received?

A. On the 13th day of August.

Q. Well, the company was formed then?

A. On the 15th, but the stuff—

Q. When was it received?

A. The stuff was in the bank on the 13th.

Q. Pardon me?

A. The gems were in the bank on the 13th.

Q. And that is when the company had been formed, on that date?

A. No, the papers of the company were not down here or were not satisfactory to the lawyers, to Mr. Barstow's knowledge or satisfactory until the 15th day when we received them.

Q. Then when the property was actually deposited in the bank in their care as custodian it was there as your property?

A. Yes.

Q. And when the company was formed it became the property of the Golden State Gem Company of Nevada?

A. Not at all. Not until all the assets of the Golden State Gem Company of California were transferred free and clear of all encumbrance.

Q. That was your agreement with Mr. Woodruff and Mr. Smith?

A. Pardon me, yes.

Q. And that agreement was never performed by either one of the three of you?

A. I put my gems in.

Q. You furnished your gems, you did your part of it?

A. Undoubtedly.

Q. How soon after that did you go to Europe?

A. I left for Europe the early part of September.

Q. And before going did you sign any stock certificates as secretary of the new company?

A. Mr. Barstow said he thought it would save a lot of time if I would sign them right now, and then he asked — well, he asked me to then and I was to retire in favor of Miss Bohn as secretary—I am not positive *or* her name. He said "You can sign these and you don't need to worry, Mr. Woodruff will attend to all money and matters and it will save"—

The Referee: Who was Mr. Barstow representing?

A. The Golden State Gem Company of California. He was also the lawyer who formed the first company.

Mr. Beveridge: Q. Was he with the Golden State Gem Company of Nevada, if you know?

A. He was the Golden State Gem Company of California's lawyer and I understand he was looking after all their books and all their business, your Worship.

Q. Were you ever in his office when he conferred as one of the Board of Directors of the Golden State Gem Company of Nevada?

A. Oh yes, on several occasions.

Q. He represented you gentlemen in the formation of the Golden State Gem Company of Nevada, is that the fact?

A. In the formation of this company I didn't have anyone representing me.

Q. Pardon me, Mr. Heiser. I said you gentlemen, not just you alone.

A. For the formation of the Nevada Company Mr. Smith and Mr. Woodruff had a little uncertainty which lawyer they should choose, whether Mr. Coleman or Mr. Barstow and there was a little confusion over it and finally they decided on Mr. Barstow.

Q. Isn't it a fact, you favored Mr. Barstow, you had confidence in him?

A. Mr. Barstow seemed to impress me he could get a lot of money and told me he could get money in big quantities, and I thought he could.

Q. And you relied on that?

A. Yes, and Mr. Smith and Mr. Woodruff on the other end. Money was the only thing we needed.

Q. Then, as attorney for the Golden State Gem Company of Nevada, he advised you before you left for Europe to sign the stock certificates as secretary of the corporation?

Mr. Meyberg: That is objected to as calling for the conclusion of the witness, purely hearsay, and no foundation laid.

Mr. Beveridge: Preliminary, your Honor.

Mr. Meyberg: As to who Mr. Barstow represented when he asked him to sign the document. Mr. Barstow would be the man to testify to that.

The Referee: Objection overruled.

(The reporter read the pending question.)

A. He asked me to sign the stock certificates so he—

Mr. Beveridge: Pardon me. That is all.

A. Pardon me, your Worship.

Mr. Beveridge: Well—

The Referee: Just a minute, please, gentlemen.

Mr. Beveridge: Pardon me.

The Referee: Mr. Heiser, when you finish answering a question don't enter into a long argument but stop there, and when counsel desires to interrupt you wait and see what objection he has and if it is proper for you to continue with your answer you will be permitted to do so, but the mere fact you have started an answer does not give you the floor to go on and finish anything you start like you would in a Parliamentary speech. Now, where were we?

Mr. Meyberg: May it please the Court, I suppose the witness was explaining an answer there and I would like to have him have the opportunity of finishing.

The Referee: Read the question.

(The reporter read the pending question as follows: "Q. Then, as attorney for the Golden State Gem Company of Nevada, he advised you before you left for Europe to sign the stock certificates as secretary of the corporation?")

The Referee: I don't see any explanation is necessary to that. The question may be answered by yes or no. If there are any other additional matters you wish to develop on cross examination, that may be done. It is true, a witness may explain his answer if the nature of the question is such that the answer is one that requires explanation, but in the guise of explaining an answer he cannot go ahead and talk just as long as he wants to.

Mr. Beveridge: Q. Now, Mr. Heiser, as the result of that advice from the attorney for the corporation do you recall how many stock certificates you signed as secretary?

Mr. Meyberg: Just a minute. That is calling for the conclusion of the witness and I think is misleading the witness. He asks as the result of that advice.

The Referee: Yes, objection sustained. If you want to ask how many certificates he signed you can do that.

Mr. Beveridge: Q. Do you remember how many certificates you signed?

A. No, I am not sure. A few. It wasn't a terrible lot.

Q. There were only three stockholders, were there not?

A. No, there were more than three stockholders, Mr. Smith and Devall and Mr. Doctor Lawrence Smith. He received shares.

Q. Do you recall how many shares of stock were issued to Mr. Smith?

A. It was something a little over—

Mr. Meyberg: I object as calling for the conclusion of the witness, purely secondary evidence. The record will speak for itself, unless he is just testing the memory of the witness. I don't know whether the witness remembers or not.

The Referee: Objection overruled.

(The reporter read the pending question.)

A. No, I don't.

Mr. Beveridge: Q. Do you recall how many shares you issued to yourself?

A. No, I don't.

Q. Do you recall how many shares you issued to any stockholders?

Mr. Meyberg: That is objected to as calling for the conclusion of the witness, and again the witness could not remember as to how many he issued. There is nothing in evidence to show he issued any stock even.

Mr. Beveridge: Pardon me. I will correct the question to read, do you recall how many certificates you signed as secretary? That is my original question.

A. No, I don't.

Q. You don't recall how many certificates you signed as secretary for any of the stockholders of the company?

A. No.

Q. But you do recall you signed a number of certificates as secretary?

A. When Mr. Barstow presented shares for my signature I always signed them, thinking they were all right.

Q. You never examined the amount on the certificates?

A. No, Mr. Barstow made out the certificates in his handwriting, if I remember correctly.

Q. The ones you took for yourself, what did you do with them?

A. I have them here, in the city.

Q. Would you be able to produce them in accordance with the demand that has been served upon your attorney to produce any and all documents?

A. Oh, I think so.

Mr. Meyberg: What is that, the demand you mean that you gave me in the court room this morning?

Mr. Beveridge: Yes. If that demand does not cover it, your Honor, I would like to have an order from the bench those stock certificates be produced, being very material.

Mr. Meyberg: Find out if the witness has them.

Mr. Beveridge: He stated he had them in Los Angeles.

The Referee: Where are the stock certificates?

A. I have some here, sir.

Q. Some in the court room?

A. None in the court room; some in San Francisco and some in London but I have receipts in the bank for those in London, your Worship.

Q. And where are those certificates?

A. Some are here and some in San Francisco and some in London, or on the way.

Q. The records you have here, where are they here in Los Angeles?

A. They are—my lawyer has a few of the records.

Q. Here in the court room?

A. You see, your Worship, I was trying to explain, when you said I was giving a Parliamentary speech, Mr. Barstow took two lots of stock and he said something about a pooling arrangement and he put them in the bank. I don't know where they are. I never saw the stock. I might have signed them. I am not positive. But Mr. Smith and Mr. Barstow put them in the bank.

Mr. Meyberg: Did you say I had the stock certificates?

A. No, I did not. They are over at the bank.

The Referee: Do you know what bank they are in?

A. I am not positive, no, not without refreshing my memory, but Mr. Smith must know.

Q. You don't have any of those stock certificates in your own individual possession?

A. No, sir. They know where they are, your Worship.

Mr. Meyberg: Did you ever have those stock certificates in your possession?

A. No. They were put in the bank. Mr. Smith and Mr. Beveridge put them in the bank.

Mr. Beveridge: You mean Mr. Barstow?

A. Pardon me, yes.

Q. The ones in San Francisco, are you able to recall how many you left in San Francisco?

A. No, I couldn't tell you exactly how many I had there.

Q. The ones you left in Europe, how many did you leave in Europe?

A. I have them in the bank, I have the bank receipt for them here. I am not positive whether it is here or San Francisco, but they are in safe keeping. They are only a few, not more than seven certificates.

Q. You had seven certificates issued to you?

A. Oh, I had several. I couldn't tell you exactly.

Mr. Meyberg: Several or seven?

Mr. Beveridge: Several certificates covering his share.

Q. Well, when you took your stock with you did your take all that was issued to you or just a portion of it?

A. No, I didn't take all of it by any means, because the majority was here locked up as I said a moment ago, locked up in a bank here.

Q. And it is over in the United States National Bank, now?

A. I don't recall which bank.

Q. Whatever it was you left there?

A. I don't know. I left the gems there and they took them out, and whether they took the shares or not, I don't know.

Q. Whatever you left is in the United States National Bank?

A. That I don't know.

Mr. Meyberg: That has been already asked and answered.

A. I don't know where they are.

The Referee: The last time you saw them they were in the United States National Bank?

A. They were in one of the banks, your Worship.

Q. But you don't know whether it was the United States National Bank or not?

A. No.

Mr. Beveridge: I guess that is all. Oh, just a minute.

I hand you what appears to be an original bill of lading, and I will ask you to state if that is the bill of lading that covers the consignment of the merchandise in question?

A. Yes, I think that is the bill of lading. It is in my brother-in-law's handwriting, I am quite sure.

Mr. Beveridge: I offer this as Trustee's Exhibit number 1. It is self-explanatory.

The Referee: So marked.

Mr. Beveridge: Q. With reference to Trustee's Exhibit number 1 that was just offered, and then with further reference to two freight bills over the headline of the Pacific Electric Railway Company I will ask you to state if as a result of the issuance of that bill of lading, Trustee's Exhibit 1, were those freight bills issued I now hand you?

A. How to you mean issued?

Mr. Meyberg: I don't know what you mean. I object to that question as unintelligible.

Mr. Beveridge: Q. Handing you here what appears to be two freight bills, one is a freight bill and another a receipt for freight delivered, I will ask you to describe those two documents?

A. Well, they are just documents.

Mr. Meyberg: I object as calling for the conclusion of the witness if he wants a description of those documents.

The Referee: Objection sustained. Let me see what they are. Have you ever seen these documents before?

A. I saw them in the United States National Bank last week, your Worship. I may have seen them months or years ago but I don't recollect. But I did see them in the United States National Bank when we asked for the files relative to the movement of those gems.

Mr. Beveridge: Q. Handing you a document that is entitled "Receipt for Freight Delivered," I will ask you if that bears your signature?

A. Yes, I think that is my signature. I am not positive. I am not positive of that. I think it is.

Q. Well, did you sign any receipt when the merchandise in question—

A. I think that is my signature. I probably wrote it in a hurry. It is not my "H" though.

Q. Is this the instrument you signed?

A. Yes.

Q. Acknowledging the receipt of the merchandise in question?

A. I think so.

The Referee: Well, it speaks for itself. He signed it.

Mr. Beveridge: That is offered as an exhibit.

The Referee: Trustee's Exhibit 2.

Mr. Meyberg: Pardon me. These exhibits belong to the United States National Bank, or the Receiver, and we have been requested not to leave any records in any courts, and all other courts have substituted photostatic copies.

Mr. Beveridge: We will substitute photostatic copies, your Honor, if the originals should be kept.

The Referee: Yes, although I don't know why a photostatic copy will not do the bank just as well in this case. I do not concede that the Receiver of the United States National Bank has any superor jurisdiction over the United States District Court. If there is an exhibit here we want I think we are entitled to it.

Mr. Meyberg: We have a letter from the Department and I think several letters written from Washington on that question.

The Referee: We are very glad to accommodate you but I do not concede as a matter of law you have any authority to issue directions as to how we shall operate this court.

Mr. Meyberg: No, I was just stating the other courts conceded the courtesy to us by returning the originals.

The Referee: This matter is of little importance to the Receiver anyway. The Trustee will have a photostatic copy

made of this return and the photostatic copy will be returned to the bank.

Mr. Beveridge: Now, Mr. Heiser, I hand you what purports to be a resolution or card required to be produced by the bank for the opening of accounts and ask you to state if that bears your signature, that card?

A. Yes, on both sides. Pardon me. Let me see the back of that. I am not sure of that.

Q. You were signing there as secretary for the Golden State Gem Company of Nevada?

A. Yes.

Q. Now, does this card, the date this card bears, enable you to refresh your recollection as to the date that the corporation was actually formed?

A. It possibly would.

Q. This card appears to bear the date of August 21, 1928.

Mr. Meyberg: August 21?

Mr. Beveridge: Yes, or August 2nd, maybe it is—is it the 21st or 2nd?

Mr. Meyberg: August 21, 1938.

A. It could not be August 2nd.

Mr. Beveridge: Pardon me.

A. It could not be August 2nd.

Mr. Beveridge: This is offered as an exhibit.

A. Could I refresh my memory—when that was opened, your Worship, it was the date Mr. Smith received the checks from Mr. Leonard Woodruff, nine thousand and odd dollars to open that account with, and that is on or about the same date.

The Referee: This card will have to be photostated and you can turn the copy in to the bank. Have you any other exhibits?

A. There is another card.

The Referee: So we can have them all done at once.

Mr. Beveridge: There will be by the time I get through offering some more documents through Mr. Smith.

The Referee: Proceed.

Mr. Beveridge: Q. Now, did you ever sign any card similar to that in connection with the Golden State Gem Company of California?

A. Yes, I introduced Mr. Smith to the United States National Bank on or about the 16th of August and he opened an account in that name. You have the card on the desk there.

Q. The Golden State Gem Company of Nevada?

A. No, California, I said.

Q. He opened an account?

A. Yes, and the card is there. It was cancelled out with this company—underneath that paper. There it is. It was on the 16th.

Q. That is the date you introduced him?

A. Introduced Mr. Smith and he opened the account and then he cancelled that account and opened the Nevada account.

The Referee: Does that bear this witness' signature?

Mr. Beveridge: Yes, your Honor, it does as the introducer of Mr. Smith to the bank.

Mr. Meyberg: I don't know that is his signature. It says by Mr. Heiser.

Mr. Beveridge: Q. Is that your signature, Mr. Heiser?

A. Yes, it is.

Q. And that is the card you used to introduce Mr. Smith?

A. Yes, Mr. Beveridge.

Q. Had you been carrying your personal account in the United States National Bank at that time?

A. No, not a personal account; the account of the company mining gems in Australia, the Australian Gem Company.

Q. And you were acquainted there?

A. Oh yes.

Q. For a number of years previous?

A. No, but long enough to know them.

The Referee: You don't contend on this card of the Golden State Gem Company, introduced by Mr. Heiser, those two words "Mr. Heiser" are not your signature, do you?

A. It looks as though I scribbled them in a hurry. I might have. In the other document offered as some exhibit, your Worship, that one pertaining to the rough material, that is not the same kind of an "H"—on your left-hand there, you see? I may have been just in a hurry. I might have had a strange pen there.

Mr. Beveridge: Q. Now, Mr. Heiser, did you ever sell any merchandise to the old Golden State Gem Company of California for which you were never paid?

Mr. Meyberg: That is objected to as incompetent, irrelevant and immaterial.

Mr. Beveridge: He is claiming to be a creditor, your Honor.

The Referee: Objection overruled.

Mr. Meyberg: Is that besides the goods we are seeking to claim on here?

Mr. Beveridge: I think the question is quite definite and clear.

The Referee: I suppose it is a general omnibus question?

A. Yes.

The Referee: Is there anything else you claim in addition to the claim here?

A. Yes, there is an opal necklace in addition to that that I delivered to Mr. Calvin Smith. He was supposed to prepare the necklace and sell to Doctor John Lawrence Smith who told me about three days ago on the telephone—

Mr. Beveridge: I object to what Mr. Smith told him.

Mr. Meyberg: Just a minute.

The Referee: Why don't you include that in your claim?

A. I didn't know until four days ago that Mr. Calvin

Smith had retained it for himself, and he told me on the phone it went in with the old goods.

Q. Who did you deliver this necklace to?

A. To Calvin Smith to sell to Doctor John Lawrence Smith who really accepted it, but Doctor John Lawrence Smith told me last week he had not accepted it and Mr. Calvin Smith kept it.

Q. That was in—

A. 1928, your Worship.

Q. You delivered it to Calvin Smith and he was going to sell it to Doctor John Lawrence Smith?

A. Yes, to re-string it and sell it to Doctor Smith.

Q. What was said at the time you delivered it to Calvin Smith?

A. That he would re-string it and put a few larger and better beads on and deliver it to Doctor Smith. Doctor Smith actually accepted the necklace.

Q. Anything else said between you and Calvin Smith?

A. That I need not worry about the money, that he was a solvent man and director in both companies.

Q. Anything else?

A. That the money would be forwarded on to me as soon as he got it.

Q. By whom?

A. By Calvin Smith.

The Referee: Any other questions?

Mr. Beveridge: I guess that is all.

Cross Examination.

By Mr. Meyberg:

Q. Mr. Heiser, the items for which you seek payment here against the Golden State Gem Company of California in this claim consisted of what?

A. Thirty odd thousand ounces of industrial sapphires.

Q. At what price?

A. At one dollar an ounce.

Q. And is that a reasonable price for those?

A. Yes, it is very reasonable. There is a drouth on the market at present.

Q. At that time, at the time you delivered them, or I will

say from the period of August, 1928, to May of 1929, was that a fair value for those stones?

A. Yes.

Q. Now, as I understand, this claim does not include 1,000 ounces of assorted sapphires also in that shipment?

A. That is correct.

Q. And does not include 1200 ounces of opals which were not included in this claim but were in that shipment?

A. Yes.

Q. And 1,000 ounces of zircons, also?

A. The zircons have been included in Mr. Lawrence's tabulations of quantities but it was not in my claim my brother-in-law sent through because I was in Europe and he attended to it for me.

Q. And also one piece of jade of 28 ounces was in the shipment but not in the claim?

A. Yes.

Mr. Beveridge: I think the claim speaks for itself.

The Referee: Yes, and what was shipped in addition to what is claimed is immaterial.

Mr. Meyberg: Now, as to the assorted sapphires, Mr. Heiser, of 1,000 ounces, also included in this shipment that went to the United States National Bank, what was the reasonable value of those from August, 1928, to May of 1929?

A. $40 an ounce.

Q. And the 1200 ounces of opals during the same period, was *was* the reasonable value of those?

A. $15 an ounce.

Q. And the 1,000 ounces of zircons, what was the reasonable value of those?

A. $10 an ounce.

Q. And the piece of jade weighing 28 pounds (?) also included in that shipment, during the same period of time, what was the reasonable value of that?

A. Around $1,000.

Q. Were any of those items ever returned to you?

A. No, they were all taken from the bank by Mr. Woodruff's people.

Q. They were all included in this list of stuff taken by Mr. Woodruff in May under this execution referred to?

A. Yes.

Q. Now, has any of that material or any of that merchandise ever been returned to you?

A. No, I never seen it since the day it was put there, your Worship, since I left the country.

Q. Why, if you know, is the claim on file here only for the 30,000 ounces of industrial sapphires?

A. My brother-in-law was under the impression that is all they had taken out, Mr. Lobree in San Francisco. I was in Europe and I cabled him to attend to the matters and I think Mr. Smith communicated wth him and told him he could protect my interest, and Mr. Lobree thought there was only the industrial stuff taken out.

* * * * *

M. E. HEISER, recalled as a witness on behalf of the Claimant, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Meyberg:

Q. Mr. Heiser, calling your attention—

The Referee: On second thought, I don't think I can assume Mr. Woodruff would testify his purchase was by agreement with Mr. —his purchase was by agreement with the Golden State Gem Company. I will have to rescind my former statement on that because I cannot assume he will testify to that because there is nothing to indicate he would so testify, nor has Mr. Smith so testified in my opinion, nor have you any basis as far as I can see for your belief that he would so testify.

Mr. Meyberg: The basis for that belief is the proceedings in the Laugharn case plus the filing of a suit upon a note which he knew already was paid and giving the money to Mr. Smith to pay them, brought suit on the notes, one of them not due for six months or more after the suit was filed, yet he filed on those and knew they were claims in the Golden State Gem Company of California and not the Nevada Company. He filed those suits, and Mr. Smith didn't even appear in those actions.

The Referee: Those are conclusions and there is nothing about that to indicate that you have any foundation for your belief that Mr. Woodruff would testify as you have outlined.

Mr. Meyberg: I believe those are the facts.

The Referee: You may believe those are the facts, but there is nothing about that I can see that would justify you in stating Mr. Woodruff would so testify.

Mr. Meyberg: Your Honor, I must assume he would testify to the true facts.

The Referee: Proceed.

Mr. Meyberg: Q. Mr. Heiser, I am showing you Trustee's Exhibit number 2. This morning you testified that you thought that was your signature, and at noontime, in my presence you looked it over very carefully—

A. It is not my signature. After I looked it over—

Q. You are positive?

A. Absolutely positive, yes.

Mr. Meyberg: I want to call the Court's attention particularly to the fact that this item is consigned to McMorrie Heisen.

The Referee: Let us not argue now. Proceed with your evidence.

Mr. Meyberg: Very well.

Q. Now, the values, Mr. Heiser, you placed on those gems this morning, on all of them, I believe I asked you if it was a fair value of them. Would you also say it was the market value of them or at least it was a minimum market value of them in your opinion at the time or from the time from August 13, 1928, to May 10, 1929, that it was the very minimum value?

A. Yes, I would.

Q. As a matter of fact, the market value would be greatly in excess of the value or amount you testified to?

A. Yes, it would.

Q. During that period?

A. Yes.

Mr. Meyberg: I believe that is all.

The Referee: Is that all?

Mr. Meyberg: One other matter.

Q. Mr. Heiser, what, if you know, is the reason why only the industrial sapphires are included in this claim?

A. Because Mr. Lobree, my brother-in-law, was informed it was only industrial sapphires taken out.

Q. Did you inform him of that, or someone else?

A. Someone else in Los Angeles here. I was in London at the time this claim was filed.

Q. Did you instruct your brother-in-law as to what the actual claim was?

A. No, he just knew from the books it was 30,000 ounces of industrial sapphires, and nearly 40,000 ounces all together.

Q. Did you instruct him to put this part in the claim, taken from the Golden State Gem Company of Nevada?

A. No, he did that of his own accord.

Mr. Meyberg: Take the witness.

The Referee: Is that all? Any other evidence.

Mr. Beveridge: Just one question to straighten out this exhibit.

Cross Examination.

By Mr. Beveridge:

Q. Calling your attention to Trustee's Exhibit number 2 in which the shipment was consigned to McMorrie Heisen, was that meant to be you?

A. Oh, I think it was meant to be me.

Mr. Meyberg: We will stipulate it was meant to be Mr. Heiser.

Objectors' Exhibit OO.

In the Superior Court of the State of California in and for the City and County of San Francisco.

No. 238,348.

Morris Heiser, Plaintiff, vs. Maude James Graves, also known as Maude James Graves Loller, Defendant.

Be It Remembered that, pursuant to notice hereunto annexed, and on the 27th day of October, 1932, at the hour of 2 o'clock p. m., at Room No. 1700, No. 333 Montgomery Street, San Francisco, California, before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared MORRIS HEISER, the plaintiff above named, who, being by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled cause, then and there testified as is hereinafter set forth.

Alvin A. Lobree, Esq., and Frank G. Finnegan, Esq., appeared as counsel for the plaintiff;

Oscar Samuels, Esq., appeared as counsel for the defendant.

* * * * *

Direct Examination.

By Mr. Samuels: Q. Mr. Heiser, where do you reside?

A. In San Francisco at present, 2504 Cabrillo Street.

Q. You say "at present". Were you recently residing elsewhere?

A. I have lived in London and Australia.

Q. You mean by that, do you, Mr. Heiser, that your business takes you there?

A. All over the world, yes sir.

Q. And what is that business?

A. Gem dealing and mining.

Q. Are you engaged in that business as an individual?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. Since I was fifteen years old.

Q. You know, of course, the defendant in this action?

A. Yes, sir.

Q. And how long have you known the defendant?

A. Since 1919.

Q. Since 1919?

A. Yes, sir.

Q. In a business way or a social way?

A. Business.

Q. When did you first come in contact with Mrs. Graves?

A. In 1919; her son introduced me to her in connection with a sapphire mining project in Australia.

Mr. Lobree: I suggest that you do not volunteer any information. Just answer the questions.

Mr. Samuels: Q. Did you seek to interest the defendant in that sapphire mining venture at that time?

Mr. Lobree: I will object to that as incompetent, immaterial and irrelevant and having no bearing on the issue.

Q. You are quite positive of that are you?

A. Yes, sir.

Q. That you are quite positive of?

A. Yes, sir.

Q. You referred to certain mines that you owned or had under lease—whatever the arrangement was is of no material moment—in Australia. I am talking about this time in 1928, the year 1928. Did you have any other mines anywhere else?

A. Anywhere else, what does that mean?

Q. Outside of Australia.

A. In 1928? No, not in 1928.

Q. How many different mining properties did you have under your control—I use that word without knowing the exact status of the title—in Australia at that time?

Mr. Lobree: I object as incompetent, immaterial and irrelevant, nothing to do with the issues of this case.

(The reporter read the question.)

A. Oh, about ten miles of country.

Q. For my information, would you call them one mine, or several properties?

A. Leases; amalgamated leases.

Q. They were all amalgamated leases?
A. Yes, sir.
Q. And you were the sole lessee, were you?
A. M. E. Heiser, yes.
Q. And they remained your property at all times?
A. M. E. Heiser, yes.
Q. You have never transferred them to anybody?
A. No; the lease is still in my name.
Q. You formed a Golden State Gem Company of Nevada, did you not?

Mr. Lobree: I object to that question as immaterial, irrelevant and incompetent. I cannot see the purpose—

Mr. Samuels: I will show that that $5000 note is connected with the issue of that stock.

Mr. Finnigan: We will make the objection to all this line of questions.

(The reporter read the last question.)

A. No, I did not form it.

Mr. Samuels: Q. Well, were you one of the incorporators?

A. Mr. Lobree and myself and Mr. Smith and several people.
Q. Who was Mr. Smith?
A. Mr. Smith of Los Angeles; there was quite a lot of people forming it.
Q. Anybody else, do you remember?
A. Mr. Woodruff, and Mr. Barstow—
Q. Who were those gentlemen, if I may ask?
A. Los Angeles people, and Oklahoma.
Q. Was there anybody in San Francisco outside of Mr. Loller and yourself?
A. No; Mr. Lobree was going to act as one of the directors in it, but he had nothing to do with the formation of it.

Mr. Lobree: I move that that be stricken out as not responsive.

Mr. Samuels: Q. When was it formed, do you remember?

A. Yes, the end of August, 1928; it started to be formed in the end of August, and it was completed some time in September, 1928.

Q. Do you know what the capital stock of that corporation was?

A. It was never completed; the company was never completed.

Mr. Lobree: I object on the ground that the corporate records would be the best evidence.

The Witness: The company was never completed, to the best of my knowledge.

Mr. Samuels: Q. Have you the corporate records?

A. No; I have not.

Q. Do you know where they are?

A. I do not.

Q. Is this one of the certificates of stock which I show you (showing paper)?

A. Yes, sir.

Q. Did the corporation reach the point where its capital stock was issued? It did, did it not?

A. They started to issue the stock and then the different people that were forming the corporation got into litigation and the company never functioned.

Q. Who were the people who got in litigation?

A. Mr. Smith and Mr. Woodruff.

Q. By that do you mean that a suit was filed?

A. A suit was filed before the company was properly organized.

Q. When was the suit filed, if you know? Was it in the year 1928?

A. I was out of the country when that happened. It was just after I arrived in London.

Q. Do you remember when you arrived in London?

A. I arrived in London the end of September, 1928. It was being formed while I was away.

Q. It was being formed while you were away?

A. Yes, sir.

Q. The corporation was?

A. Yes, sir. They started to form; it was in formation when I left.

Q. Was any stock ever issued?

A. I endorsed a lot of stock for them to use while I was away. They asked me to endorse certain stocks and I didn't know exactly—

Q. Look at this certificate.

A. Yes, that is my endorsement there. They asked me to endorse a lot of stock.

Q. Who asked you?

A. The lawyers up there that were forming the company.

Q. What was transferred to the company, if anything, for the issuance of the stock, do you know?

A. Yes, there was thirty odd thousand or thirty-two—I am not quite positive, but there was a large quantity of sapphires, approximately 40,000 ounces of sapphires, *and 1200, ozs of Best Blue Sapphires, MEH. HVF.; NP.* rough, and 1200 ounces of opal, and a thousand ounces of star sapphire and a thousand ounces of zircon.

Q. What is the latter?

A. It is an oxide of aluminum.

Q. You say they were transferred; they were owned by you theretofore?

A. Owned by myself.

Q. By you individually?

A. Yes.

Q. And by transfer you mean what; that you delivered possession of them to anybody?

A. No, I took them to the vaults of the United States National Bank at Eighth and Spring Streets and delivered them to the Golden State Gem Company of California.

Q. What was the Golden State Gem Company of California?

A. It was a California private company.

Q. A corporation?

A. Yes, sir, incorporated in California.

Q. Where was its principal place of business?

A. I think 711 South San Pedro Street, Los Angeles.

Q. When was that formed?

A. Oh, I am not positive; it has been in existence over 20

Matter in italics in handwriting on original.

years, but it was recapitalized, I think—I don't know exactly; I couldn't say for sure.

Q. You were the main stockholder in that corporation?

A. No, not at all; I did not own a share of stock in it.

Q. Under what circumstances did you turn these jewels over to this Golden State Gem Company of California?

A. Because they informed me that if I turned the gems over—

Q. Who were "they"

A. The president, Mr. Smith, and Mr. Woodruff; that if I turned the gems over to the Golden State Gem Company of California, they would form the Nevada company in such a way, and have it financed so that the mines could be operated, and they would give me all the money I required to operate the mines on a big scale, and they would undertake to buy a big quantity of preferred shares in the mines in Australia, provided I would turn those gems in.

Q. Was there anything said about the number of shares of stock that would be issued to you also for the transfer of these gems to the Golden State Gem Company of California?

A. No, I was to get no shares out of that at all.

Q. You were to get no shares out of that corporation at all?

A. No, all those shares were supposed to go to the Nevada Company.

Q. I am talking about the Golden State Gem Company of Nevada.

A. You asked me about the California company.

Q. If I did it was a mistake. Read my question.

The Witness: In the event of Mr. Saimuels asking me the wrong question and I answer, I don't want it to go in the record against me.

Mr. Lobree: Let the record show that there was a misunderstanding between counsel and the witness as to the name.

The Witness: There were two companies, one California, and one Nevada.

Mr. Samuels: I will repeat the question. Read the question.

(The reporter read the question: "Was there anything said to you about the number of shares of stock that would be issued to you also for the transfer of these gems to the Golden State Gem Company of California?")

Mr. Samuels: Insert the word as it should appear there. Insert "Golden State Gem Company of Nevada."

The Witness: ~~Yes; but they never issued them to me.~~ *MEH. HVF., NP.*

Q. What was said to you on that subject?

A. They just promised to issue certain shares to me. He gave me a written instrument to that effect, too.

Q. What has become of the written agreement?

A. I don't know; I think it is in Los Angeles.

Q. Will you produce that?

A. I don't know whether I could at present, because the company is in litigation there.

Q. Who were the different parties to this litigation. You told me the plaintiff was Smith. Who else?

A. Woodruff.

Q. Who are the defendants?

A. They are fighting each other.

Q. Do you know any of the defendants in there?

A. Mr. Smith is one, and Mr. Woodruff; they are both fighting each other.

Q. Do you know which one brought the suit?

A. I think Woodruff brought the suit.

Q. What are Mr. Woodruff's initials?

A. L. J., I think.

Q. You were in the State of California on the 24th of August, 1928, were you not?

A. Yes, sir.

Q. Your wife was, too?

A. To the best of my knowledge and belief, yes.

Q. How many shares of the stock of the Nevada corporation were issued in your name, do you know?

A. I think there was $80,000 at one time in my name in Los Angeles, and they were shipped down here to me; they

shipped the books down to me to sign and send to Los Angeles, and they sent $80,000 which was to go to Mr. and Mrs. Loller—8,000—let me see; I think there was 8,000 shares, yes, 8,000 shares were sent down here which I was to sign and countersign and transfer to Mr. and Mrs. Loller.

Q. By what arrangement were you to transfer them, and with whom was the arrangement made, to transfer them to Mr. and Mrs. Loller, or Graves?

A. Mr. and Mrs. Loller. Well, it is a long story.

Q. I would like to hear it.

A. All right. Whilst I was in Australia between 1927, some time during 1927, Mrs. Graves had told Mrs. Heiser that she would like to buy some of the rough blue sapphires from these new mines in the new fields that I was opening up.

Q. Was Mrs. Heiser here at the time?

A. Yes. She was not so well, so she could not accompany me. And Mrs. Heiser gave a sample of rough blue sapphires which I had left in the vaults amongst many of my other goods, to a Mr. Hunt—

Q. What vaults do you refer to? The Wells Fargo?

A. No, I don't think it was that—yes, I think they were; I am not positive which vault. I think it was the Union Trust Company and Wells Fargo, but I am not positive now which vault it was; but after they were delivered to Mr. Hunt and during that time, I understand—Mrs. Heiser told me they were sent—Mrs. Graves had told her that they were sent to Paris and while there the people in Paris had expressed a desire to obtain more of them, because they were gems of good quality and color, or something to that effect. And on my return Mr. Hunt was dead, and I had seen Mrs. Loller and Mr. Loller, and I had shown them quite a lot of my rough gems, on my return, and Mrs. Graves said that on account of her submitting these gems to Paris she was positive that large quantities of rough sapphire could be sold in Paris through her sons' connections there—I think the gentleman's name who was connected with them was Mr. LeKentrick and Mr. Bietrix.

Mr. Lobree: What was the date of this?

A. Around 1928.

Q. What part of the year 1928?

A. When this was taking place?

Q. Yes.

A. This was taking place immediately after the notes were given to me; it was within a few days of the notes; this thing was going on in 1928, my conversation.

Q. The conversation you testified to took place a few days subsequent to August 24, 1928?

A. Yes, sir.

Mr. Samuels: Go ahead.

A. And they said they could sell very large quantities of sapphires in Paris. Well, I said I was not in a financial position to ship larger quantities than what I had, because I hadn't sufficient cash to open the mines in a big way.

Q. Go ahead.

A. Mr. Walker Graves, or Mr. Jeff Graves had arrived during that time from Paris, somewhere about that time, and he had confirmed his mother's statement that big quantities of sapphires of the quality I had shown him could be sold there.

Q. You are referring to what period? You are referring to Mr. J. J. Graves?

A. Yes, sir.

Q. When did he arrive from Paris?

A. I don't know exactly when he arrived, but—

Q. How long after the execution of these notes?

A. This was a few days after the execution of the notes that I conferred with him, on this trip to Paris, and the rough gems that I had, because they arrived then from Australia.

Q. Then I understand that Mr. Jefferson Graves returned from Paris, we will say, within a week or two weeks after August 24, 1928?

A. That I don't know—no, I think he must have arrived before that. I don't know when he returned, because I was away, backward and forward.

Q. August 24, 1928, is the day when you consummated the sale?

A. Yes. I don't know when he arrived from Paris. What has that to do with when he arrived from Paris?

Q. You don't have to ask questions, I am trying to find out from you.

A. I don't know.

Q. You say you saw him in this connection?

A. I saw him in connection with the rough sapphires that I had.

Q. When did you see him in that connection?

A. I think it was right at the end—if I remember correctly, it was the 28th day or right at the very end of August.

Q. It was the 28th day of August of 1928?

A. Yes, sir. *around that time.* *MEH. HVF., NP.*

Q. Where did you see him?

A. I saw him over in his office at the—

Q. (Interrupting) James Company?

A. Yes, sir. I am not positive whether it was the 28th or the 30th?

Q. We will say in that proximity?

A. Yes, sir.

Q. You are not binding yourself to a specific date. Was any reference made at that time by you or by him to the sale which you had just made to his mother?

A. He knew of the sale, because he was trying to get a large blue sapphire which I had sold to his mother, for his wife.

Q. Was there any reference made to the fact that you had sold about thirty-five thousand or forty thousand dollars worth of gems to his mother a few days before, we will say, the 24th day of August, 1928?

A. Yes, sir.

Q. What was the language used?

A. He said "Well, if it makes her happy to have a lot of gems around her, why shouldn't she indulge in it?" Something to that effect.

Q. Was any reference made by you to the fact that the purchase price had been paid by these two notes?

A. I told him that she had bought a large quantity of gems, but I don't know whether the exact amount was discussed, because I assumed he knew that.

Mr. Finnigan: I insist that all this testimony referring

Matter in italics in handwriting on original.

to things that happened after the execution of the notes, is immaterial, irrelevant and incompetent, and I object to it.

Mr. Samuels: Q. Did you refer at all to the approximate quantity, by way of price, of gems that you had sold to Mrs. Graves?

A. We always refer to the prices of gems when we show them.

Q. I am talking of the conversation with Jefferson Graves.

A. I don't get the question.

Q. In this conversation that you have referred to, that you had with Jefferson Graves, to the best of your recollection, at the place of business of the James Company, and in which you have stated part of the conversation, and in which you have also stated that he knew, according to your belief, that you had sold his mother some $35,000 worth of gems some short time before this, was there any reference made by either one of you to the price?

A. That I cannot recollect; because we were not on that subject, we were on the subject of rough sapphires for *France*. *MEH. HVF. NP.* ~~friends~~.

Q. Was there any reference made to the fact that the price had been paid in the form of promissory notes?

A. That I don't know, sir; I can't remember.

Q. How often did you see Mr. Jefferson Graves at or about this time?

A. We met practically every day until about the 5th day of September. I used to go up to his apartment at the Huntington, and we met regularly, because he was anxious to get to Paris, because he said that the sapphires would be in demand there, and to hurry along as quickly as possible.

Q. On these daily visits that you made to Mr. Graves, or these daily meetings with him, was there any reference at any time to the notes that the mother had given you for this quantity of gems?

A. You just asked me that a few minutes ago.

Q. I asked you as to one specific conversation, one specific meeting.

A. Give me that question again.

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(The reporter read the question.)

A. Not that I can recollect.

Q. On any of these occasions prior to Mr. Graves' departure which you say was about the 5th of the following month, was any reference made to the selling price of these gems; the selling price that you had procured for them?

A. That is the same question.

Q. No, the other was as to the execution of the notes. Now I am asking you as to the price itself, $35,000.

A. I am confused.

Mr. Lobrec: Read the question.

(The reporter read the question.)

A. I can not recollect that there was.

Mr. Samuels: Q. On any of these occasions when you visited with, or met Mr. Jeff Graves, from the 24th day of August, 1928, until the 5th day of September or such time as he departed from the state of California, was there any reference made to the sale by you at or about the 24th day of August, 1928, of a considerable quantity of gems?

A. What do you mean by reference?

Q. By either one of you; reference to the quantity?

A. I can't just recollect that, *the exact quantity & price was spoken of.* *MEH. HVF., NP.*

Q. You can't recollect that?

A. No, *but we did discuss that Mrs. Graves had bought a large quantity of cut gems from me.* *MEH. HVF., NP.*

Q. Then so far as you know, your present recollection is that on any of the occasions that you met Mr. Jefferson Graves from the 24th day of August, 1928, until his departure on the 5th day of September, 1928, there was no conversation between Mr. Graves and yourself which would indicate that he knew that you had sold to his mother $35,000 worth of gems in one lot, or that she had delivered these two notes?

A. I am not sure, sir; I am not sure.

Q. When you referred to this first deal of August 24th 1928, you had sold gems, had you not, quite a number of them—I think you testified between seven and ten thousand dollars worth to Mrs. Graves before this?

Matter in italics in handwriting on original.

A. Yes, sir.

Q. During a protracted period of time?

A. Yes, sir.

Q. When you refer to this first deal, I take it you mean about a transaction of considerable size at one time; is that right?

A. I don't understand the question.

(The reporter read the question.)

A. I don't understand it now. You repeated just now about a nine thousand dollar deal. Are you trying to tangle me up, or what?

Mr. Finnegan: If you don't understand, don't argue.

Mr. Samuels: Q. Coming now to the corporation, do you know who engaged the attorneys to form the corporation?

A. Yes, sir.

Q. Who were they?

A. Mr. Calvin ~~and~~ Smith, *and Woodruff.*

MEH. HVF., NP.

Q. The two gentlemen from the south?

A. Yes, sir.

Q. Who were the attorneys who formed the corporation?

A. Rohe and Freston.

Q. Where was their office at that time if you know?

A. I couldn't remember exactly where it was.

Q. Attorneys of what state?

A. California; it was in Los Angeles.

Q. The corporation was formed by Los Angeles attorneys? Is that right.

Mr. Lobree: If you know.

A. ~~Yes, sir~~, I don't know. I never saw their charter, that

MEH. HVF., NP.

I remember; I don't know for sure. These people went ahead with this thing; I don't know whether they were California attorneys or whether they were from some other state.

Mr. Samuels: Q. As I understand it, the formation of this corporation resulted in part from a suggestion of Mrs.

Matter in italics in handwriting on original.

Graves and her son Jeff, that they could sell a large quantity of your gems abroad, is that right?

A. No, not exactly.

Q. I am trying to find out what was the cause of it. I though you related that. What was the cause of it?

A. That company was being formed by Mr. Smith and Mr. Woodruff, because there was a call for opals and sapphires from Australia, in large quantities.

Q. How many shares of the stock of the Golden State Gem Company of Nevada were actually issued to you?

A. There was nothing actually issued to me. The shares that I received when I was down here was, I think, 8000 shares, and they were sent down to Mr. and Mrs. Loller for a contract they were supposed to get for us in Europe.

Q. Sent down by whom?

A. The secretary of the company.

Q. Who was the secretary of the company?

A. There was a young lady in the lawyer's office who was acting as secretary. They made me an honorary secretary, but I was merely a figurehead.

Q. Do you know whether you were either appointed or elected secretary of the corporation?

A. I am not positive, but I think I must have been; but things were carried on there without me.

Q. Did you receive a certificate for 8000 shares of stock issued to you?

A. 8000 were issued in my name which I was to transfer to Mr. and Mrs. Loller.

Q. Under what understanding were you to transfer them?

A. That Mr. Loller was to be on the advisory board, and Walker and Jefferson Graves were to get a contract for me in Paris—it is on the minutes of the company, I am sure.

Q. Do you know where the minutes of the company are?

A. No, but I think I could get them for you in a matter of time, or a copy of them.

Mr. Samuels: I would be very glad to see them. They are down south too, are they?

A. Yes.

Q. Do you know who the parties are who represent the respective parties in this suit of Woodruff v. Smith?

A. They have been changed so much I couldn't tell you. They have been changing around. It is still in litigation. There are $425,000 worth of gems in one company, and there are all my gems in another, and they have been—in other words, it is just a mix-up, a tangled skein. It has been mixed up in such a way.

Q. Do you remember the names of any of the attorneys?

A. No, I couldn't tell you the names of the attorneys right offhand, because Mr. Barstow has been dismissed from the case, and they have changed lawyers—I don't know how many times.

Q. You referred to some four hundred odd thousand dollars worth of gems in one company and a large amount in the other?

A. Yes, sir.

Q. In which company were the $400,000 worth of gems?

A. They were all in the California company.

Q. All of them in the California company?

A. Yes, sir. It was supposed to be turned over to the other company.

Q. Have those gems been returned to you at all?

A. No, none of them have been returned. They are still in the hands of the receiver, I think.

Q. There is a receiver of the company?

A. Yes, there has been a receiver appointed.

Q. Do you know who the receiver is?

A. No, I couldn't remember offhand. I think he has been changed also. I am not positive, though.

Q. You have taken no steps to recover this four hundred odd thousand dollars worth of gems?

A. Pardon me; don't misunderstand me. The $420,000 worth of gems were not my property; they belonged to the Golden State Gem Company of California.

Q. They belonged to them?

A. Yes, sir. The gems I put in were valued at $164,000.

Q. You put in where?

A. That is what they cost to produce.

Q. You say "put in"; put in where?

A. Put into the vaults of the bank at Eighth and Spring streets, Los Angeles.

Q. Did you lose control of them, or have they been returned to you?

A. I have placed them in there and I had to leave them in the name of the Golden State Gem Company of California, because I was leaving immediately for Europe; I left on an early day in September for France.

Q. In 1928?

A. Yes, sir.

Q. On the 6th day?

A. 6th day of September, or 6th or 8th.

Q. Of September, 1928, you left for France?

A. Yes, sir.

Q. You left from Los Angeles?

A. No, I left from San Francisco.

Q. You say these gems, the one hundred odd thousand dollars worth were in the vaults of the bank at Eighth and Spring streets in the name of the California corporation?

A. Yes, sir.

Q. Have they been returned to you?

A. No, sir.

Q. And they are still there, so far as you know?

A. No, they have been taken out. That bank has gone into the hands of a receiver also.

Q. That is a United States bank?

A. Yes, United States Bank, I think they call it; United States National Bank I think. Mr. Fotheringham knows. Where did you send that money to Mr. Fotheringham?

Mr. Samuels: I know where it is. You never asserted an adverse title, so far as you know, to these one hundred and seventy odd thousand dollars—whatever the amount may have been, of gems, that you deposited in these vaults? You never claimed them? They don't belong to you?

Yes *MEH. HVF., NP.*

A. ~~No~~, *they do belong to me and I have claimed them.*

Q. The only reason, so far as you know, that these gems are still in the vaults of the bank, is that the bank has gone into receivership, is that correct?

A. No, there was another reason, because I had to leave them in the name of the Golden State Gem Company of California—Mr. Woodruff attached them on a note—wait a

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minute, it is complicated. I don't want to get the thing mixed. Mr. Woodruff had attached them on a note that had been *previously kept that previous MEH. HVF...NP.* secured, and he had ~~them as~~ security.

Q. Whose note do you refer to?

A. A note from Mr. Smith, which had nothing to do with me at all.

Q. Who represents you down there?

A. I have got two or three different lawyers; a Mr. Beverage.

Q. You said an arrangement was made, if I remember correctly, for the issuance of certain shares of stock of the Nevada corporation?

A. Yes, sir.

Q. To Mrs. Loller?

A. Yes, sir.

Q. Who were the parties to that arrangement?

A. Mrs. Loller—

Mr. Lobree: I object to the question unless the proper foundation is laid as to the time that arrangement was made.

Mr. Samuels: I am going to ask him that.

Q. When was this arrangement made?

A. This arrangement was made between the 24th of August and the early part of September.

Q. Who were present at the time the arrangement was made?

A. I couldn't recollect right off, but I think it was in Mrs. Graves' office.

Q. In Mrs. Graves' office?

A. Yes, sir, with Mr. Loller and Mr. Dudley. I am not positive whether it was there or in Mr. Dudley's office. I have got some slight idea—I am not positive whether it was in Mr. Dudley's or Mrs. Graves': I wouldn't say for sure.

Q. When you say Mrs. Graves' office, you refer to the James Company office?

A. Yes, sir.

Q. At that time, whether it was in the office of Mr. Dudley or the office of the James Company, are you quite sure that both Mrs. Graves and Mr. Dudley were present?

A. No, I am not positive if Mrs. Graves was there, or if Mr. Loller phoned Mrs. Graves from Mr. Dudley's office. Mr. Dudley was her lawyer.

Q. Mr. Loller himself was present?

A. Yes.

Q. In any event, Mr. Loller or Mr. Dudley were present?

A. Yes, I am nearly positive it was in Mr. Dudley's office. I am not sure.

Q. Was that arrangement in writing or not?

A. The only writing we had was that—

Q. I am asking you first whether it was in writing.

Mr. Lobree: If you remember.

A. I don't remember.

Mr. Samuels: Q. Was that not a writing prepared by Mr. Dudley embodying or supposed to embody the proposed arrangement?

A. There was an agreement offered me in 1926, but Mr. Bert Schlesinger advised me not to sign it.

Q. I am talking about 1928.

A. No.

Q. There was not?

A. Not to my knowledge, not to my recollection.

Q. But in any event, the arrangement was not effectuated, was it?

A. ~~No.~~ *the entire arrangement, of which part was the issuance of these shares, was never completed.*

MEH. HVF., NP.

Q. Is that correct?

A. I can't understand that.

Q. This alleged arrangement was not carried into effect, was it? Was the alleged arrangement carried into effect?

A. Yes.

Q. What was the arrangement, if you will tell me?

A. The arrangement was that Mr. Graves had contacts in Paris that would require large quantities of my rough sapphires. For that contact I was to allow them a first option and call over my gems in Europe, and for that contact they were to get ~~80,000 shares or~~ 8000 shares of this Golden State

MEH. HVF., NP.

Matter in italics in handwriting on original.

Gem Company *of Nevada*. The Golden State Gem Company was to find me the money to mine so as to enable me to execute that contract.

Q. What was the Golden State Gem Company to get?

A. They were to get a call in America for my gems.

Q. They were to find you the money—is that correct—to mine, and you say they were to get a call in America for your gems. What does that mean, an agency?

A. They were to have the agency in America, and also they were to buy, I think, more than half of the preferred shares of the company.

Q. Who were "they"?

A. The company that we are talking about, the Golden State Gem Company of Nevada.

Q. They were to buy half of the preferred shares, of its own shares?

A. To buy half of the shares of my mining—half the interest in my mining.

Q. They were to buy a half interest in your mine?

A. Yes, which would enable them—

Q. (Interrupting) Had the price been determined at which they should buy the half interest?

A. Yes, sir.

Q. What was that price?

A. I can't recollect directly, but they were to send to Australia for the sapphires.

Mr. Lobree: I suggest that you answer the question.

Mr. Samuels: You don't remember the price. Was this arrangement embodied in any writing, that you refer to?

A. Yes, sir.

Q. Have you a copy of it?

A. I haven't here, because all the papers are in the litigation.

Q. Have you it down south?

A. It is down south.

Q. Can you produce that?

A. I couldn't say that I could, because—

Q. Could you procure a copy of it?

A. I am not positive, because there is lots of unusual pro-

ceedings in connection with this case. One of the files I decided to get at, but a lawyer stole it from the Hall of Records; and there are a lot of serious connections, and I can't promise any—

Mr. Lobree: Your contention is that the arrangement has some connection with the $5000 note?

Mr. Samuels: Yes. Q. Let me ask you this: Who was your lawyer who is now handling that feature in Los Angeles?

A. I am just thinking of the lawyer's name now.

Q. Who was handling it?

A. Beverage is handling—but I broke away from him recently because—

Q. Have you substituted anybody for him?

A. I have not definitely, no.

Q. What is his first name?

A. I am not sure whether it is W or R.

Q. Do you know his address?

A. No, he moved his office I understand; I am not positive.

Q. When did you last see him?

A. Oh, about three or four months ago.

Q. Where did you call upon him then to see him?

A. I met him at the hotel office at the Alexandria.

Q. You did not call upon him at his office?

A. No, he was hiding out because he thought somebody was going to hijack him, and he was hiding out in the Hotel Roslyn.

Q. As I understand it then, while you formed your corporation—

A. I didn't form the corporation.

Q. While the corporation was formed? Is that correct?

A. It was being formed.

Q. In Nevada?

A. Yes, sir.

Q. It was formed, was it not?

A. No, they started the formation of it in Nevada, but it was never formed.

Q. Stock was issued in it?

A. They started to issue stock.

Q. When you say it was never formed, what do you mean?

Mr. Lobree: That calls for the opinion and conclusion of the witness.

Mr. Samuels: Q. What do you mean by it, Mr. Heiser?

A. The lawyer in Los Angeles told me the company was never properly organized or formed.

Q. That is what you mean by it?

A. Yes, that is what the lawyer told me.

Q. Look at this certificate of stock if you will kindly. You will see that it bears the witness mark on the back of that stock and immediately below the assignment clause, of your wife, is that correct?

A. Yes, sir.

Q. Is that her *wriging?*

A. I think so; I am nearly sure.

Q. And further viewing the certificate, immediately below the assignment clause, that is your signature, is that correct?

A. Yes, sir.

Q. And inserted in blank spaces are the words "I" and "Maude James Loller"; is that correct?

A. Yes, sir.

Q. In whose handwriting are those words?

A. I think that is mine.

Q. You will also notice handwriting, "25 August 1928" on the date line; whose handwriting is that?

A. I think that is mine also, sir.

Q. Were those insertions made on the date the assignment bears?

A. I don't understand that.

Q. Were those insertions in the blank spaces which you have just referred to, "I", "Maudie James Loller" and the date "25 August 1928" made on the date appearing in the date line, "25 August 28"?

A. I don't think so, sir, because a lot of those papers were prepared in Los Angeles while I was here, and they sent them down here for me to sign them, or from Los Angeles to San Francisco, and I am not positive of that.

Q. Did you endorse any other certificates of this corporation at the same time in the same manner?

A. Yes, sir.

Q. How many more?

A. There were several others; I don't know exactly how many.

Q. What is your best recollection?

A. I remember giving them to Mr. Loller.

Q. When did you give them to Mr. Loller?

A. I think it was the early part of September, I am not positive.

Q. The early part of September?

A. Yes, it was just before I left for Europe.

Q. It is a fact, is it not, that you gave him 5000 shares in five separate certificates?

A. I couldn't tell you exactly how many.

Q. What is your best recollection?

A. I couldn't tell you how many I gave him offhand.

Q. Well, I will show them to you, so you will note it. There is no objection to showing them to you. I am going to show you. The certificate number which has been referred to by the witness up to the present time is No. 14. I am going to show you now certificates Numbers 10, 11, 12 and 13, in addition. They run serially from 10 to 14 inclusive. Look at the certificates, each one, and advise me whether or not they do not bear your handwriting in each instance on the back, and in conjunction with the assignment provision or transfer clause? I am referring to certificates as I mentioned by number, 10, for 1000 shares; 11, for 1000 shares; 12, for 3000 shares; 13, for 1000 shares; 14, for 1000 shares; all dated, so far as issue was concerned, on the 24th day of August, 1928; and all transferred by endorsement on the back, in the space provided therefor, to Maudie James Loller, in the instance of all certificates, save 11, and in 11, to Maude James Loller; and each bearing date of transfer on the 25th of August, 1928; Certificate No. 14 and Certificate No. 12 being witnessed by Mrs. Lillian Heiser, and the remaining three certificates being unwitnessed; each certificate representing common stock of Golden State Gem Company of Nevada, without nominal or par value.

Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?

A. To Mr. Loller.

Q. Do you remember where you delivered them to him?

A. I think it was in his office; I am not positive; I am nearly sure it was in his office on Market street.

Q. You are talking about the James Company premises?

A. Yes, sir.

Q. Was anybody present when you delivered them?

A. No, I don't think there was.

Q. What is your best recollection of the date of delivery?

A. I think it was about the first of September, sir, the early part of September, I think.

Q. Why did you insert the 25th day of August, 1928?

A. Because they told me to do that immediately when I received them, and I think after they were issued in Los Angeles they were sent here and I got them next day. *I received the shares, several days prior to delivery. MEH. HVF., NP.*

Q. Who were "they"?

A. I think it was Mr. Smith; I am not sure.

Q. By letter?

A. I think he telephoned to me to do it, because they did a lot of business by telephoning to me.

Q. These were executed in the presence of your wife; these two bear her signature?

A. Yes, sir.

Q. Were they transferred in the presence of your wife? Was the transfer clause filled out in the presence of your wife?

A. Yes.

Q. That was where, in your home?

A. Yes, upon, I think, 24th Avenue we lived then.

Q. Did you ever advise Mrs. Loller that you had transferred to Mr. Loller these 8000 shares of stock in this corporation?

A. I think that Mrs. Graves and Mr. Jefferson Graves and Mr. Loller and all of us met just the day before I left for Europe.

Q. Where did you meet?

Matter in italics in handwriting on original.

A. I think if I can remember correctly, it was over at Ross.

Mr. Finnegan: I object that the stock shows they were transferred to Mrs. Graves. Do you mean transferred or delivered?

Mr. Samuels: Did I say transferred?

Mr. Finnegan: I think you said "delivered".

Mr. Samuels: In any event, let the record show, so there will be no room for confusion between counsel and the witness, that the question is directed to the physical delivery of the stock to Mr. Loller. What was the further statement you were making?

A. I forgot the question now.

Q. You say you think there was a meeting?

A. There was a meeting at Ross with Mr. Graves and Mr. Loller and Mrs. Loller.

Q. Was Mrs. Graves present?

A. Yes, and there was a discussion of the rough sapphires which I was to supply them and give them an option on, and these shares, and the general condition of that syndicate or company was spoken of in general terms, quite a lot.

Q. Was there any reference at any time, or mention at any time by you to Mrs. Graves that you had delivered physically to Mr. Loller the shares of stock in the Golden State Gem Company of Nevada?

A. I don't recollect making a statement like that.

Q. Did you ever mention to Mrs. Graves that the 8000 shares of stock in this corporation had been transferred by endorsement of certificates or otherwise, by you to her?

A. I don't recollect, sir, but I know we spoke of them; and I know she had them.

Q. When did you find out she had them?

A. Because Will spoke—Mr. Loller spoke of them, and Mr. Jeff Graves spoke of them over there.

Q. Over where?

A. Over at their home in Ross.

Q. In the presence of Mrs. Graves?

A. Yes, sir.

Q. What was said about stock?

A. They just discussed the stock. They said that if the contracts were booked up in France and the French people got the sapphires and sold them, as Mr. Jeff thought he could do, and the company here functioned correctly and got the money with which the mines could be developed properly, that the stock would be worth a lot of money in a short time.

Q. Was there any reference at any time to the fact that you had transferred some of the stock to Mrs. Graves, or we will say, delivered it, to Mr. Loller—any reference in the presence of Mrs. Graves?

A. I can't just recollect right off to say definitely.

Q. How was it you transferred 8000 shares of stock, this particular number of 8000 shares?

Mr. Bobrey: Were there 8000 or 7000?

Mr. Samuels: Seven thousand. Pardon me. Where I said 8000, change it to seven.

A. I am not positive of that; I am under the impression that there were some more shares that Mr. Loller got in his name, but I am not positive. I think Mr. Loller got an equal amount as that, the same amount as that.

Q. Have you any recollection of delivering him 7000 shares issued in his name?

A. I remember telling him he had shares, but I didn't say it ~~was~~ 7000.

Q. Have you any recollection of delivering him any more shares than the 7000 shares standing in the name of Mrs. Graves in this corporation?

A. I am under the impression that when I delivered them *some* there were ~~a lot~~ more shares ~~with it~~ *in Lollars name delivered to him.* *MEH.. HVF.. NP.*

Q. You are under that impression?

A. Yes.

Q. How many shares more?

A. I couldn't say for sure.

Q. More than 10,000?

A. ~~Yes.~~ *No,* *MEH.. HVF.. NP.*

Q. More than 20,000?

Matter in italics in handwriting on original.

A. I think there were something ~~like~~ *between 1000 & 8000* ~~80,000~~ shares; I ~~am not positive though, but~~ *don't* I think there was a lot more than that. *MEH, HVF, NP.*

Q. You think you delivered to Mr. Loller some 80,000 shares in all, in this corporation?

A. Yes, sir, *between 1000 & 8000 shares. No MEH, HVF, N.P.*

Q. Evidenced by how many certificates? What is your best recollection?

A. I couldn't say right off.

Q. More than one?

A. ~~Yes, more than one.~~ *I am not sure MEH., HVF., NP.*

Q. More than two?

A. I think so, yes. *I am not sure; there may only have been one. MEH., HVF., NP.*

Q. Less than ten? I am talking about certificates like these.

Mr. Lobree: If you have any recollection.

A. I haven't any definite recollection of how many.

Mr. Samuels: Q. You can't say whether there were two or ten?

A. No; I know I delivered them; if I remember correctly there were ~~80,000~~ *8,000* shares *in all.* *MEH., HVF., NP.*

Q. When did you deliver them?

A. All together.

Q. They were all delivered together, is that correct?

A. Yes, sir.

Q. How were the other shares? In whose name? Were they issued in your name and signed by you?

A. I couldn't say for sure, without having them here.

Q. Do you know whether they were in the name of Mr. Loller or Mrs. Loller by either direct issuance or by assignment?

Mr. Lobree: We make the objection that the stock certificates are the best evidence.

Matter in italics in handwriting on original.

Mr. Samuels: They are not here; we haven't got them.

Mr. Lobree: The witness can't remember those details.

Mr. Samuels: If he can't remember, he is going to answer and say "I don't remember." Q. What is your best recollection on the subject?

A. I don't know the question.

(The reporter read the question.)

A. No, I don't recollect.

Q. You have no recollection at all then, have you, of transferring by assignment such as appears upon this blank, the back of Certificate No. 14, which I have shown you, any additional shares of stock in this corporation to either Mrs. Graves or Mr. Loller?

A. I said just a few minutes ago I had; there were more shares than that.

Q. You didn't understand the question. Read the question.

(The reporter read the question.)

A. I have said previously that there were more shares than that, I was sure of that.

Q. I ask you whether you have any recollection of the assigning of any additional shares yourself?

A. I haven't any recollection.

Q. Do you know whether or not any additional shares were issued directly in the name of either Mrs. Graves or Mr. Loller?

A. No, I couldn't recollect because I was not active—

Mr. Lobree: That is the answer; just answer the question.

Mr. Samuels: Q. Now, isn't it a fact that the $5000 note involved in this suit was transferred to you by Mrs. Graves in consideration of the 7000 shares of stock I have just disclosed to you?

A. No.

Q. It had no connection with it at all?

A. Nothing at all whatsoever.

Q. Then, according to your statement, Mr. Heiser, the

stock in this corporation was valueless from the very time of its issuance?

A. That I don't know. I was led to believe that it was quite valuable stock and if all people had functioned the way they said they would, it would have been very valuable, and I was out an enormous amount of money by people not functioning as they said they would.

Q. You mean loss of property?

A. Loss of property and time.

Q. As a portion of this plan which you have referred to in conjunction with the development of your mines in Australia, you went to London, did you not, to meet Mr. Graves and an expert by the name of Bietrix?

A. Yes.

Q. And he examined some of your gems taken from these mines?

A. Yes, sir.

Q. And he reported adversely on them did he not?

A. No, sir, on the contrary he was anxious for me to come immediately to Paris with my gems, which I did.

Q. You went to Paris with your gems?

A. Yes.

Q. Was any arrangement made there for the disposal of your gems?

A. Yes, the first package that had arrived were to be taken out and shown to several people, and they expressed a desire to purchase them, and within a few days he sold 30,000 francs worth of blue sapphires.

Q. Who did this?

A. Mr. Beatrix, the gentleman you just named; Mr. Beatrix and Mr. LeKentrick; they were together.

Q. Was there a Mr. Ponzi?

A. Yes, I think Mr. Ponzi is the man that asked for the 30,000 francs worth; the first lot.

Q. Did you sign, as secretary of the corporation Golden State Gem Company of Nevada, any other certificates than the ones I have called to your attention?

A. I signed a complete book of certificates.

Q. That was about when? The same time?

August I think

A. I don't know exactly the date, but it was in ~~April~~.

MEH., HVF., NP.

Matter in italics in handwriting on original.

because I think they wanted a sample of my signature and I signed it and they took a photostat or something of it and I had to sign several books; a complete book of shares, blank; they were all in blank and they wanted me to sign, because while I was away they wanted my signature on the papers, which I did, and left them there in blank.

Q. You signed a certificate book, and they also took a facsimile of your signature?

A. Yes, sir.

Q. But you signed in your own handwriting a book of certificates?

A. Yes, they asked me to sign.

Q. You did, didn't you?

A. Yes, sir.

Q. Did you ever attend any meetings of this company?

A. Yes, I attended one or two meetings.

Q. Where?

A. Not the meetings of the company. I attended one or two meetings in Los Angeles before the company was formed, when we were deciding about the contract for my rough gems. It was in Los Angeles but I couldn't tell you exactly.

San Pedro

One of the places was in 711 South ~~Spring~~ street; on several occasions we met there; there were several occasions.

MEH., HVF., NP.

Q. Between what time?

A. Other occasions I had to run up one day and come back the next day, like; go up in the morning and come back in the evening; then I was selling goods there. I had sold several thousand dollars worth. It was 711 South San Pedro street.

Q. Do you know if that has any office name, that building?

A. It was the Golden State Gem Company of California.

Q. Was it an office?

A. Two big buildings, approximately 100 by about 300. They had a big gem cutting factory on one side and show cases on the other. There was 711, and I think 713; I am not positive.

Q. In those premises there were meetings of the Golden State Gem Company of Nevada?

A. Of California.

Matter in italics in handwriting on original.

Q. I am talking about Nevada. Did you ever attend—

A. There was no company to attend. They were making arrangements with the California company, that the Nevada company would be formed and function while I was away.

Q. Did you ever attend what purported to be a directors' meeting or a stockholders' meeting of the Golden State Gem Company of Nevada?

A. No, sir, not to my recollection.

* * * * *

State of California, City and County of San Francisco, ss.

I, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, hereby certify that the witness Morris Heiser, named in the foregoing deposition was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled cause; that said deposition was commenced on the 27th day of October, 1932, having been continued by stipulation of the respective parties, from the date specified in the notice of taking said deposition; that the same was taken at Room 1600, No. 333 Montgomery Street, San Francisco, California; that the said deposition was taken down in shorthand by J. L. Holland, a competent shorthand reporter and disinterested party, and by him transcribed into longhand typewriting; that after having been so transcribed it was carefully read over by said witness, and having been corrected by him in such particulars as he desired, was by him subscribed in my presence.

In Witness Whereof I have hereunto set my hand and affixed my official seal this 16th day of November, 1932.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

Endorsed Filed May 17-1933. H. A. van der Zee, Clerk By H. Brunner Deputy Clerk.

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* * * * *

OO-2.

Amendment to Answer to First Amended Complaint.

In the Superior Court of the State of California in and for the City and County of San Francisco.

Morris Heiser, Plaintiff, vs. Maude James Graves, also known as Maude James Graves Loller, Defendant. No. 238348.

Now comes the defendant above named, by way of amendment to the Answer, on file in the above entitled cause, to the First Amended Complaint on file herein, by addition of further defenses to each of the counts of said Complaint, and alleges as follows:

And as a third and separate defense to the first count of said First Amended Complaint, defendant is informed and believes and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that the promissory note mentioned in said first count was executed and delivered by defendant to plaintiff and accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock, claimed by defendant at said time to be owned by him, of Golden State Gem Company of Nevada, a corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a fourth and separate defense to the first count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that the promissory note mentioned in said first count was executed and deliv-

ered by defendant to plaintiff and accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock of Golden State Gem Company of Nevada, a corporation. Defendant is informed and believes, and upon such information and belief alleges, that although said shares of stock stood at the time of said purchase in the name of plaintiff, said shares of stock were at said time in reality treasury stock of said corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a third and separate defense to the second count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation existing and incorporated under the laws of the State of Nevada. Defendant further alleges that she signed her name on the bottom of the promissory note mentioned in said second count and delivered said note to plaintiff and that the same was accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock, claimed by defendant at said time to be owned by him, of Golden State Gem Company of Nevada, a corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a fourth and separate defense to the second count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that she signed her

name on the bottom of the promissory note mentioned in said second count and delivered said note to plaintiff and that the same was accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock of Golden State Gem Company of Nevada. Defendant is informed and believes, and upon such information and belief alleges, that although said shares of stock stood at the time of said purchase in the name of plaintiff, said shares of stock were at said time in reality treasury stock of said corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

Wherefore, defendant prays that plaintiff take nothing by his action and that she may be hence dismissed with costs herein incurred.

OSCAR SAMUELS,
Attorney for Defendant.

[Verified.]

OO-4.

Judgment.

(Illegible initials and date /37.)

In the Superior Court of the State of California in and for the City and County of San Francisco.

Morris Heiser, Plaintiff, vs. Jefferson J. Graves, Administrator with the will annexed of the Estate of Maude James Graves, also known as Maude James Loller and Maude James Graves Loller, deceased, Defendant. No. 238,348.

This cause having been regularly brought on for trial on March 2d, 3d, 4th, 5th and 8th, 1936, before the Court sitting without a jury, the plaintiff appearing by W. Olds, Esq., his attorney, and the defendant appearing by Oscar

Samuels, Esq. and Tevis Jacobs, Esq., his attorneys, and evidence, both oral and documentary, having been introduced by the respective parties and the Court having heard and considered the proofs offered by the parties, and the records and papers in said cause, and said cause having been thereupon submitted to the Court for its decision, and the parties hereto having by written stipulation on file herein waived findings of fact and conclusions of law and having agreed upon the amount of defendant's costs to be included in and as a part of the judgment herein,

It Is Hereby Ordered, Adjudged and Decreed that the above-named plaintiff take nothing by his said action and that said defendant do have and recover from said plaintiff as his costs and disbursements in said action the sum of $135.08.

Judgment Rendered This 26th day of March, 1937.

JAMES H. WALD, Judge.

Recorded Mar. 27, 1937 10:55 o'clock A. M. No. 406 Page 304. H. A. van der Zee, Clerk. By R. D. Carroll Deputy Clerk.

The annexed instrument is a correct copy of the original on file in my office. Attest: Certified: June 8-1939. H. A. van der Zee, County Clerk of San Francisco, and Ex-Officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco. By J. M. Cummins, Deputy. (Seal).

Objectors' Exhibit PP.

* * * * * *

Application for Leave to Sell and Issue Stock.

(Stamped) State Corporation Department Received June 16 1937 Los Angeles Office.

Before the Commissioner of Corporations of the State of California.

In the Matter of the Application of International Gems, a corporation, for leave to sell and issue stock.

To the Honorable, the Commissioner of Corporations of the State of California:

Pursuant to the provisions of "The Corporate Securities Act" of California, the undersigned, International Gems, a corporation, organized and existing under and by virtue of the laws of the State of California, hereby makes application to the Commissioner of Corporations of said State for leave to sell and issue stock, as set forth in the prayer of this Application.

In support of said application, said corporation represents as follows:

First: International Gems, a corporation, was duly incorporated under the laws of the State of California, on the 8th day of June, 1937; that its principal place of business is in the City of and County of Los Angeles, State of California;

Second: The number of shares, which, by the Articles of Incorporation, may be issued is as follows: 500,000 shares of the par value of $1.00 per share.

Third: That no stock has been subscribed for prior to this time.

Fourth: Applicant proposes to issue at this time the number of shares hereinafter set forth for the purposes hereinafter stated.

Fifth: There has been no previous sale of stock and no brokerage has been paid, and applicant will not issue any prospectus in the sale of its stock, except by special permission from the Commissioner of Corporations.

Sixth: Applicant proposes to acquire the business heretofore operated by M. E. Heiser, consisting of the importing and exporting of precious gems; also to acquire the business of Ted Zimmer, consisting of cutting and polishing of precious gems; also to acquire the stock of rough and finished precious gems belonging to M. E. Heiser and now located in the safety deposit vault of the Bank of America; also to acquire from M. E. Heiser three gem-cutting machines, together with the right to manufacture and use additional machines of the same type.

Seventh: Applicant proposes to issue to Fred D. Tiffany, M. E. Heiser, Ted Zimmer, Sam Kress, Arnold Staunton, H. Goldman and B. Cameron, or to any or all of them, an aggregate of 150,000 shares of this corporation's stock as consideration for the above described assets. The said business has sufficient assets and business on hand to commence and continue operations. The proceeds from the sale of stock, if any, will be used as additional working capital, particularly for the purpose of enlarging the factory, increasing stock of merchandise and generally expanding the said business.

Eighth: The names and addresses of the officers of said corporation are as follows:

	Present address:
Fred D. Tiffany	Oklahoma City, Oklahoma
M. E. Heiser	Los Angeles, California
Ted Zimmer	Los Angeles, California
Sam Kress	Los Angeles, California
Arnold Staunton	Los Angeles, California
H. Goldman	Los Angeles, California
B. Cameron	Los Angeles, California

Ninth: The business will be in charge of the following officers:

Fred D. Tiffany, President, who for more than ten years last past has been engaged in handling the personal financial affairs of himself and his family, and also in dealing in precious stones;

M. E. Heiser, First Vice-President, who for the past twenty years has been engaged as an exporter and importer of precious gems in various parts of the world, and also in the business of mining precious gems in all parts of the world; and

Ted Zimmer, Second Vice-President, who will be in charge of the cutting of the gems and manufacturing of the jewelry. Mr. Zimmer for the past nineteen years has been actively engaged in the gem business, nine years in business for himself, and ten years employed by Petrie & Company of Los Angeles, as manager of their gem cutting factory.

Tenth: Applicant at present has no assets or liabilities other than the organization expenses, and has conducted no business as such corporation; therefore, no financial statement can be prepared or submitted at this time.

Eleventh: Attached hereto and filed herewith are the following Exhibits, which by the reference herein are made a part of this Application, viz:

Copy of Articles of Incorporation	Exhibit "A"
Copy of By-Laws	Exhibit "B"
Copy of Minutes of Organization Meeting of the Organizers of said Corporation, and copy of Minutes of similar meeting of the Board of Directors of said corporation	Exhibit "C"
Copies of Proposed Certificates	Exhibit "D"
List of Assets to be Acquired by Corporation in Exchange of 150,000 shares of stock	Exhibit "E"
Schedule of Proposed Operations	Exhibit "F"

Wherefore, applicant requests that said Commissioner of Corporations grant said corporation leave to sell and issue to Fred D. Tiffany, M. E. Heiser, Ted Zimmer, Sam Kress, Arnold Staunton, H. Goldman and B. Cameron, or to any or all of them, an aggregate of 150,000 shares of this corporation's stock in exchange for the physical assets described and referred to in Exhibit "E" hereof, first to be transferred to the corporation; also for leave to sell and issue to the public 125,000 shares at a price of $1.00 per share with the right to pay twenty per cent commission on all sales, so as to net this corporation eighty per cent of the total received from such sale or sales of said shares.

Dated at Los Angeles, California, this 10th day of June, 1937.

INTERNATIONAL GEMS
By M. E. HEISER
By B. CAMERON

State of California, County of Los Angeles, ss.

M. E. Heiser, being first duly sworn, deposes and says:

That he is the First Vice-President of International Gems, a corporation; that he makes this Affidavit for and on behalf of said corporation; that he has read the foregoing Application and all of the Exhibits thereto attached and made a part thereof, and that the same and each thereof and all statements therein contained are true of his own knowledge.

M. E. HEISER.

Subscribed and sworn to before me this 10th day of June, 1937. Geo. W. Perkins, Notary Public in and for said County and State. (Notarial Seal).

Los Angeles, California, October 16th, 1937.

Commissioner of Corporations of the State of California.
State Building, Los Angeles, California.

In re: International Gems 65704 LA

Sir: In view of the present condition of the gem market, both in this country and abroad, we deem it advisable to defer any activities with respect to any stock issued of this company until some future date.

We, therefore, request the withdrawal of the Application for Permit filed in this matter.

Respectfully yours,

INTERNATIONAL GEMS, A corporation
By M. E. HEISER, Vice-President.

Objector's Exhibit No. 1

Notice of Unsecured Property Taxes

JOHN R. QUINN, COUNTY ASSESSOR
LOS ANGELES CALIF.

ASSM'T NO. 53772 VOL. 173 PAGE 220 CODE 1

ASSM'T NO. 53772 VOL. 173 PAGE 220 CODE 1

DO NOT DETACH

1939

No further notice of taxes due on this bill will be sent you.
PLEASE PRESENT THIS NOTICE WITH REMITTANCE
See reverse side for important information.

HOWARD L WOODRUFF
4532 HOLLYWOOD BLVD
CITY

The taxes on your unsecured property listed below are as follows:

		VALUE	TAX
FURNITURE			
	35 BAGS SAMPLE ORE 415 S SAN PEDRO COLYEAR VAN & STGE	50	
MONEY			
Total			
Exemption H H	Vet.		
Net Total	Rate 5.2333		$
Solvent Credits	Rate 001		$
TOTAL TAX NOW DUE AND PAYABLE			$ 2.61

1939-40

Make all Remittances Payable to

JOHN R. QUINN, County Assessor
Room 401, Hall of Justice
Los Angeles California

THIS BILL, WHEN PROPERLY STAMPED HERE BECOMES A RECEIPT FOR PAYMENT OF TAXES ON PROPERTY DESCRIBED HEREON FOR THE FISCAL YEAR JULY 1, 1939 - JUNE 30, 1940.

$ 2.61 Tax
No. 47754

(Stamp) No. 7256-C Law Heiser vs. Woodruff, Woodruff Exhibit No. D Filed 6 23 1939. R. S. Zimmerman, Clerk. By Cross, Deputy Clerk.

Important Inforanation

1. Unsecured property taxes are due and payable immediately upon assessment.

2. The assessor may collect unsecured taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed.

3. A penalty of eight per cent shall be added to all unsecured personal property taxes, unpaid on September first.

4. Unsecured taxes not collected by the assessor on or before the last business day in July shall thereafter be collected by the tax collector. After the last business day in July make remittance payable to, and mail direct to the tax collector.

5. The assessor accepts checks, drafts, and money orders only as agent of the taxpayer for his accommodation, and assumes no responsibility for delay in depositing items for collection, for the loss of such items or the proceeds thereof in transit, or for losses through the failure or neglect of any institution used in the collection thereof or upon which said items are drawn.

6. Taxes levied, as hereon stated, may be made a lien upon real property, if in the judgment of the assessor such real property is of sufficient value. If this is desired a real estate return must be filed with the assessor on or before July 2nd.

7. Please bring this bill with you to the office of the assessor when you make your real property declaration, or are paying the taxes on this bill.

Re No. 2593 M
Langhan ete Bankrupt
v
Woodruff Trustees
Exhibit No. 1
Filed 4/22 1932
Moss Referee

Re No. 13393-J
Golden State Gem Bankrupt
Obj claim Heiser Trustees
Exhibit No. 1
Filed 4/22 1932
Moss Referee

Objector's Exhibit Q Q 4

ORIGINAL BILL OF LADING

FORM 352

S F

Date Aug 9 1928

Received by LOS ANGELES STEAMSHIP COMPANY, hereinafter called Carrier,

FROM E. A. Lobree Harvard

[illegible]

500.00

75.00

Consigned to Mr Monroe Heiser (Heiser)

Destination c/o Golden State Grain Co

Route Los Angeles

MARKS AND NUMBERS (As given by Shipper)	NO. PKGS.	DESCRIPTION OF ARTICLES (As given by Shipper)	WEIGHT (Subject to correction)		
	36.	Sacks Mech Corundum (Ore)	4325		

EXHIBIT No. E 3 Filed 6 Clerk

Hearing No. 72546

NOT INSURED

Shippers desiring Carrier to insure at expense of shipper, owner, [illegible] or consignee must show insurance value and sign below.

Charges Advanced by Carrier $

Value of Shipment stated by Shipper $ 500.00

Value [illegible] Shipper's Signature

Said packages were RECEIVED and are to be held for carried and delivered by Carrier and by each several succeeding Carrier, if any, subject to all the stipulations and conditions hereon AND ON THE REVERSE SIDE HEREOF and under which freight rates on said packages were adjusted and packages were RECEIVED for transportation and to all of which Shipper has signed and hereby [illegible] every holder hereof shall be held bound thereby whether same be signed or assigned by the Shipper.

36 Aug

E. A. Lobree

Mrs Killian Heiser

SHIPPER

(FOR CARRIER)

SIGNATURES BY INITIALS ONLY NOT ACCEPTED, NOR PRINTED SIGNATURES UNLESS SUBSCRIBED WITH FULL NAME OF SHIPPER'S AGENT

RELEASE: Shipper, desiring to receive benefit of the rates provided by Carrier's current tariff that may lawfully apply when merchandise is shipped at a released or declared valuation, hereby stipulates that the goods covered by this bill of lading are such and all of the value of $ ..... per

[At this point of objectors' exhibit QQ appears a receipt for delivered freight, August 16, 1928, Morrie Heiser to Pacific Electric Railway Company, which receipt was filed as defendant's exhibit F in case No. 7250-C, United States District Court, Southern District of California, Heiser vs. Woodruff et al. This receipt appears at page 683, and is, therefore, not reproduced again.]

Re No. 13393-J
Golden State Gem, Bankrupt
Obj claim Heiser Trustees
Exhibit No. 2
Filed 4 22 1932
Moss Referee

Re No. Q 93 M
Laughan etc Bankrupt
v
Woodruff Trustees
Exhibit No. 2
Filed 4 22 1932
Moss Referee

District Court of the United States, Southern District of California, Central Division.

United States of America, Southern District of California ss.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby

certify that the foregoing is a full, true, and correct copy of Notice of Unsecured Property Taxes, filed as defendant's exhibit D; Bill of Lading, filed as defendant's exhibit E; and Receipt for Freight Delivered, filed as defendant's exhibit F, all in the case of Heiser v. Woodruff, No. 7256-C Law, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court, this 23rd day of October, A. D. 1940.

R. S. ZIMMERMAN, Clerk.
By FRANCIS E. CROSS, Deputy Clerk.

(Seal)

Objectors' Exhibit RR.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge Presiding.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al. Defendants. No. 7256-C—Law.

Reporters' Transcript of testimony and proceedings on presentation of evidence as to the value of the property of plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939.

Appearances: Leonard J. Meyberg, Esq., for the Plaintiff; Ames Peterson, Esq., and Robert L. Beveridge, Esq., for Defendant Leonard Woodruff.

MAURICE EMANUEL HEISER, the plaintiff herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

Q. By Mr. Meyberg: What is your full name?
A. Maurice Emanuel Heiser.
Q. Mr. Heiser, you are the plaintiff in this action?
A. Yes, sir.
Q. Mr. Heiser, how long have you been in the gem business?
A. Over 30 years.
Q. During that period of time have you bought and sold rough gems?
A. Yes.
Q. Of various types?
A. Yes.
Q. Including sapphires?
A. Yes.
Q. Opals?
A. Yes.
Q. Zircons?
A. Yes.
Q. Have you ever mined those stones, Mr. Heiser?
A. Yes, sir.
Q. How long ago, and for how long have you mined them?
A. For about 16 years I was mining.
Q. Where?
A. In the Anakie field of Queensland, and in the New South Wales field; that is in the other state.
Q. At about what period of time?
A. In the Anakie field?
Q. In and about what period of time did you mine?
A. From 1911 right up until 1928.
Q. Did that include the mining of sapphires?
A. Yes, sir.
Q. And of opals?
A. Yes, sir.
Q. And of zircons?
A. Zircons, yes.
Q. Did you ever attend college?

A. Yes.
Q. In mining?
A. Yes.
Q. What college?
A. Mt. Morgan School of Mines, Queensland, Australia.
Q. How long did you attend?
A. Two years.
Q. For how long have you been buying and selling such material, Mr. Heiser?
A. All my life, sir; ever since I started mining.
Q. That is for how long?
A. Just over 30 years.
Q. At what points, and what places have you sold such material?
A. We sell on the mines in Australia, and in London, Manhattan Garden, and Germany, the Dutche Edielstien, Gutshiff, and St. Cloud, the French-Swiss border, and St. Maurice, the Swiss-French border, and I have sold through Paris and through Russia. I have sold all over the world.
Q. During what period, or how long have you done that?
A. Out of approximately 20 odd years; 22 years, sir.
Q. During that period of time have you been dealing in rough stones, as well as cut stones?
A. Chiefly rough, sir.
Q. Do you understand cutting stones?
A. Yes, sir.
Q. Cutting sapphires?
A. Yes, sir.
Q. Can you cut them yourself?
A. Yes, sir.
Q. Have you done so?
A. Yes, sir.
Q. And zircons?
A. Yes, sir.
Q. Opals?
A. Yes, sir.
Q. For how long a period of time have you actually done that yourself?
A. I represented the Queensland government at the Panama Exposition, as their expert cutter for demonstration, in

1915, in San Francisco, cutting, to demonstrate how gems were cut, and how they are mined.

Q. How many dollars worth of rough material, including sapphires, zircons and opals, would you say you had dealt with in the last twenty years, and sold, for instance?

A. Approximately a million and a half dollars worth.

Q. Does that include mechanical industrial rough sapphire?

A. Yes.

Q. Does that include blue sapphires, rough?

A. Yes, sir.

Q. And does that include star sapphires, rough?

A. Yes, sir.

Q. And does that include opals, black and light, rough?

A. Yes, sir.

Q. Does that include zircons, rough?

A. Yes, sir.

Q. You have dealt generally for the past twenty years in all of those rough materials?

A. Yes, sir.

Q. And have sold them throughout the world?

A. Yes, sir.

Q. In the points you have stated?

A. Yes, sir.

Q. Directing your attention to the allegations of paragraph VI of the complaint, on page 3, to the 35,000 ounces, more or less, of mechanical industrial rough sapphire, are you familiar with the value of that material?

A. Yes, sir.

Q. In and about May of 1929?

A. Yes.

Q. Had you, prior to that time, bought and sold quantities of it?

A. Yes.

Q. Sold quantities of it that large, prior to that time?

A. As large as what?

Q. As large as 35,000 ounces?

A. Not in one bulk. We have sold up to 15,000 ounces in one bulk to the Dutche Edielstien Gutshiff Company, Germany.

Q. What year?

A. I think it was about 1929.

Q. Had you sold it prior to that time?

A. Yes.

Q. What was the value of 35,000 ounces of mechanical industrial rough sapphire in and about May, 1929, Mr. Heiser?

Mr. Peterson: I object to that upon the ground that no proper foundation has been laid. There is no showing what this material was; that he was the owner of it, or anything else. I want to know, is this supposed to be material this man bought, before he expresses an opinion as to the value of it?

The Court: The question is directed to the 35,000 ounces described in the complaint?

Mr. Meyberg: Yes, your Honor. I commenced my question that way. Let us have the question.

Mr. Peterson: I may have missed it.

(Question read by the reporter.)

Mr. Meyberg: —described in the complaint—we will add that to the question. You understand that I am speaking of the material described in the complaint?

A. Yes, sir. That would sell from three and sixpence to five and sixpence an ounce at that time.

Q. Translate that into dollars, at that time.

A Eighty odd cents an ounce, to about $1.36.

Q. I direct your attention to the 1200 ounces of blue sapphires, rough, referred to in the complaint, in paragraph VI, page 3: In and about May, 1929, are you familiar with the value of that material?

A. Yes, sir.

Q. What was the value per ounce?

Mr. Peterson: What material?

Mr. Meyberg: The 1200 ounces.

A. $60 an ounce.

Q. 1200 ounces of blue sapphire, rough?

Mr. Beveridge: How much?

A. $60 an ounce.

Q. By Mr. Mayberg: Had you sold material of that general description?

A. Yes, sir.

Q. And general type, in and about that time, before that time?

A. Yes.

Q. At what price?

A. Ranging from $50 up to one-hundred odd dollars an ounce, sir.

Q. Had you sold mechanical industrial rough sapphires, similar to that, to which I have referred, at or about that same time in 1929, or within a year or so previous to that time?

A. Yes, sir.

Q. At prices ranging from 80 cents to a dollar and thirty cents an ounce?

A. Yes, sir.

Q. I direct your attention to 1000 ounces of star sapphire, rough, referred to in the complaint. Are you familiar with the value of that material at or about May, 1929?

A. Yes, sir.

Q. What was the value of that material?

A. $50 an ounce.

Q. I direct your attention to 1200 ounces of opals, black and light, rough, referred to in the complaint. Are you familiar with the value of that material in and about May, 1929?

A. Yes, sir.

Q. Had you sold material of that nature in and about that time, or prior thereto?

A. Yes, sir.

Q. What was the value of that material?

A. $15 an ounce.

Q. Referring to the 1000 ounces of zircons, rough, referred to in the complaint,—are you familiar with the value of that material at or about May, 1929?

A. Yes, sir.

Q. Had you sold and dealt in that type of material prior to that time, and in or about that time?

A. Yes.

Q. What was the value of that material?

A. $10 an ounce.

Q. Referring to the piece of jade that is set out in the complaint, weighing 28 pounds—are you familiar with the value of jade?

A. Yes, sir.

Q. Were you at that time?

A. Yes.

Q. What was the value of that particular piece of jade in and about that time?

A. It was worth anything from $1000 to $5000, depending upon what it was needed for.

Q. Mr. Heiser, you had occasion yesterday, at the Colyear warehouse, to see two pieces of material, two halves of material—that is, one piece of material sawed in half, of black material, is that correct?

A. Yes, sir.

Q. What was that?

A. Obsidian; volcanic glass.

Q. Has it any value?

A. Not to my knowledge.

Q. Did that look anything like jade?

A. No.

Q. Do you know what Australian—

A. New Zealand?

Q. Do you know what New Zealand green stone is?

A. Yes, sir.

Q. Would you call that New Zealand green stone?

A. No, sir.

The Court: Call what?

Mr. Meyberg: The piece that he saw.

The Court: Obsidian?

Mr. Meyberg: Yes, obsidian, your Honor. I might suggest that the purpose of this is, one witness had stated he saw two pieces of material there that were not jade; they were some kind of green stone. That is my purpose of interrogating the witness in regard to that.

Q. I direct your attention, Mr. Heiser, to a conversation attended by you in and about May 9, 1932. Do you recall

having been present at the southwest corner of Eighth and Spring, in or about that time?

A. Yes, sir.

Q. Was Mrs. Woodruff present?

A. Yes.

Q. Was Mr. Howard Woodruff present?

A. Yes.

Mr. Peterson: I don't see why he should lead his own witness. I object to it.

Mr. Meyberg: This is impeachment, your Honor. I am asking whether or not these different people were there.

Mr. Peterson: Counsel knows without asking leading questions, it is not done in that manner.

The Court: You can direct an impeaching question; you can direct the witness to specific statements, but not in this respect. The objection will be sustained upon the ground that the question seems to be leading.

Q. By Mr. Meyberg: Did you, at or about May 9, 1932, or at any other time, or at all, at a moving van, or in a van or truck, at Eighth and Spring Streets, in the City of Los Angeles, or at any other place, in the presence of Mrs. Woodruff and Mr. Howard Woodruff, or either of them, state in sum, substance or effect, that all of your material was there?

A. No, sir.

The Court: You said no?

A. Yes, sir.

Mr. Meyberg: He said no, your Honor.

Q. Do you know where the District Attorney's office of the County of Los Angeles is?

A. Yes, sir.

Q. Do you know where the Hall of Justice is?

A. Yes, sir.

Q. Do you know where the Federal Building is?

A. Yes, sir.

Q. And where it was in 1932, in May?

A. Yes.

Q. You knew where all of those places were in 1932?

A. Yes, sir.

Q. Did you ever have any occasion, or did you ever examine any of this material at any of these places, or in front of any of those places?

A. No, sir.

Q. Or near any of those places, except Eighth and Spring?

A. At Eighth and Spring.

Q. At Eighth and Spring?

A. Yes, that was all.

Q. Did you see some of this material down at Colyear's warehouse, in or about May, 1932?

A. Yes, sir.

Q. At that time did you weigh it, or see it weighed by some one?

A. Yes; it was weighed.

Q. Did you examine it at the warehouse?

A. I just had a look at some of the bags as they were being opened and tied up.

Q. Had you already examined it on the van, prior to that time, at Eighth and Spring Streets?

A. Yes, sir.

Q. Did you make any statement at the warehouse, in sum, substance or effect, that all of the material was there?

A. No, sir.

Q. Did you ever make such a statement?

A. No, sir.

Q. Do you know Mr. Francis Cobb?

A. No; I don't think I have ever seen the gentleman.

The Court: Who is that?

Mr. Meyberg: Mr. Francis Cobb.

Q. Do you know Mr. Woolwine, when you see him?

A. Yes, sir.

Q. Was he present at the time you examined some of this material at Eighth and Spring Streets?

A. Yes, sir.

Q. In or about May, 1932?

A. Yes, sir.

Mr. Meyberg: You may ask.

Cross Examination

Q. By Mr. Peterson: Did I understand, Mr. Heiser, that you brought the material here, or caused it to be brought, such as described in your complaint?

A. It was shipped.

Mr. Meyberg: That is objected to as immaterial. That is not in issue here.

Mr. Peterson: Oh, yes.

Mr. Meyberg: As to what he brought here?

Mr. Peterson: You have inquired about the matter; your complaint alleges he owned it. We are concerned with the value. I want to know how it got here. It would throw considerable light upon the value, to show what he paid for it.

The Court: Yes.

Q. By Mr. Peterson: You may read the question.

(Question read by the reporter.)

A. Yes.

Q. Did you obtain all of the material described in your complaint from the same country?

A. All from Australia.

Q. Did the material described in your complaint leave Australia for the United States from the same port?

A. That I am not sure, sir.

Q. Did it arrive here in one shipment?

A. That I am not sure of, either.

Q. But you had it sent, didn't you?

A. Pardon me, if I may; Your Worship, tell you the way it was shipped. The Queensland government had me come to represent them, and that material was all shipped as an exhibit by the government at the Panama Exposition. I think it came over in several different shipments because of the different exhibits.

Q. I thought you just told me you had it shipped.

A. It was shipped by the Australian government and left here.

Q. Was it property of the Australian government?

A. No; it was my property. We had it shipped from

Australia to America, to Los Angeles, and to San Francisco.

Q. I am asking you a very plain question. You say this was your property?

A. Yes, sir.

Q. I am asking you from what port or ports in Australia it was shipped to the United States.

The Court: The witness has answered, I think, that he wasn't sure. It might have been shipped from several ports. Am I correct?

A. Yes, your Worship.

Q. By Mr. Peterson: To what port in the United States did it come?

A. I think San Francisco.

Q. You were here to receive it?

A. No, sir.

Q. But your best recollection is it was San Francisco?

A. I think it was San Francisco.

Q. Will you please tell me the date when it arrived here?

A. I couldn't answer that.

Q. Approximately?

A. It was some time in 1914.

Q. So I gather from your testimony then that this material, that is—

A. Pardon—

Q. Just a minute. If my question is not clear you may ask me. Mr. Reporter, may I have the question?

(Question read by the reporter.)

Q. —that is, all of it that is described in your complaint, arrived in San Francisco before the opening of the 1915 Exposition?

A. Yes.

Q. And you were the owner of that property?

A. Yes, sir.

Q. What duty did you pay the United States government when it arrived here?

A. I don't think they pay—

Mr. Meyberg: I object to that as being immaterial.

Mr. Peterson: It throws light upon value.

The Court: Overruled.

Q. By Mr. Peterson: Will you answer the question?

A. I didn't pay any duty on it. The Australian government arranged for the duties.

Q. You paid no duty?

Mr. Meyberg: Just a minute.

The Court: Did the Australian government arrange for all duties?

A. That is correct, sir.

Q. By Mr. Peterson: Just so we are clear? You did not pay any duty yourself?

A. No. It was given to me—

Q. Pardon me—

Mr. Meyberg: Let him explain his answer if he wishes to.

The Court: Proceed with your questions, Mr. Peterson.

Q. By Mr. Peterson: Do you know whether the Australian government paid any duty on this?

A. I am not sure, sir, but no doubt they would have done it.

Q. I am not asking you that. You may answer whether you do know or do not know.

A. I am not sure.

Q. Was the property described in your complaint ever returned to the Australian government?

A. No; it was my property.

Q. It never was sent back to Australia?

A. No; it has remained in this country.

Q. Did you ever at any time, from the time it was brought here up to the present minute, pay the United States government any duty upon that property?

A. Personally, I didn't.

Q. Do you know of anyone in your behalf who ever paid one cent of import duty to the government of the United States on that material?

A. Your Worship, can I explain the conditions that prevailed?

The Court: No, Mr. Heiser. The rule is to answer the

question; and then you may explain it, but before we go into that, I don't know just whether the court is interested in that or not, Mr. Peterson, as to whether anybody should or should not pay duty on this. I don't think that the court is particularly interested in that.

Mr. Peterson: Can I make my point clear?

The Court: Yes.

Mr. Peterson: My point is this: We know the court will take judicial notice of the fact that precious stones, gems and things of that kind, coming into the United States are dutiable, and the duty that they pay is in exact proportion to their value.

Mr. Beveridge: 10 per cent.

Mr. Peterson: Whatever it is. That is a matter of judicial notice. He says that the Australian government arranged for these gems to come here, evidently for the specific purpose of being exhibited at the 1915 exposition at San Francisco. So far well and good.

Mr. Meyberg: There is no such evidence as that.

Mr. Peterson: That is the way I understood him. As I recall his testimony he said that the property was sent here by the Australian government to the Pacific Exposition we had in 1915, evidently as an exhibit. Now, I want to show by him that the material remained here, and was eventually put into some commercial use, or attempted to be put into such use, but no duty on it was ever paid to the government, as going to show value.

The Court: If duty were paid, yes, you might properly inquire; and I take it, on your theory, if no duty were paid, however, and that is the testimony, I believe, that is the end of it, it would seem to me.

Mr. Peterson: Yes; I think you are right.

The Witness: Your Worship, may I explain?

The Court: No; we are not here looking after the interests of the United States government.

A. But there is no duty on rough stone.

The Court: The court will overrule it, and will permit you to interrogate in that particular.

A. I beg your pardon, Your Worship?

Q. By Mr. Peterson: So, to pursue my inquiry, from the time that the stones arrived here in 1914, was it, or 1915?

The Court: I think 1914.

A. In the early part of 1914.

Q. By Mr. Peterson: They have been here, so far as you know, ever since?

The Court: What.

Mr. Peterson: They have been here in America, so far as he knows, ever since?

A. Yes.

Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the exposition in 1915 down to 1928?

Mr. Meyberg: I object to that as immaterial, as to where they were, your Honor.

The Court: Overruled.

Q. By Mr. Peterson: Where were they?

A. I think in the Wells Fargo Nevada Safe Deposit Company.

Q. In San Francisco?

A. Yes, sir.

Q. All that time?

A. Yes.

The Court: The Wells Fargo Nevada what?

A. The Wells Fargo Nevada Bank, Safe Deposit Department.

Q. By Mr. Peterson: That is in San Francisco?

A. Yes.

Q. Did you pay the storage on that?

Mr. Meyberg: That is immaterial, your Honor, and I object upon the ground that it is immaterial, whether he paid the storage or not.

The Court: Sustained.

Q. By Mr. Peterson: Were those gems taxed?

Mr. Meyberg: I object to that as immaterial, whether they were or not.

Mr. Peterson: It goes to show value.

A. I am not sure, sir.

Mr. Meyberg: Just a minute, Mr. Heiser.

The Court: You may ask if they were taxed.

Mr. Meyberg: May I make my objection, your Honor?

The Court: Certainly. I understood you had objected.

Mr. Meyberg: I don't know whether I had the ground of the objection in. I object on the ground that it is immaterial, and it doesn't tend to prove any value.

The Court: I am assuming there is something follows this that will indicate they were taxed, on the same line as the assessor's testimony here.

Mr. Meyberg: May I add to my objection that it would still be objectionable on the ground that it is immaterial: that the assessed value doesn't, in this state, tend to prove value for market value.

The Court: It goes to the weight of the evidence. You can add that objection, and the objection will be overruled. Proceed.

Mr. Peterson: May I have the question?

(Question read by the reporter.)

Q. What is the answer?

A. I am not sure.

(The court here took an adjournment until 2:00 o'clock in the afternoon.)

(Whereupon an adjournment was taken until 2:00 o'clock p. m. of this day.)

Afternoon Session 2:00 o'clock.

MAURICE EMANUEL HEISER recalled.

Cross Examination resumed.

Mr. Peterson: I was asking the witness as to whether he paid any duty on this rough sapphire material, and he said he didn't. Mr. Meyberg says he checked with the collector during the noon hour, and there isn't any import duty on it.

Mr. Meyberg: The collector informed me he had been with the office thirty years, and Mr. Heiser, when he came on the stand, stated he never had heard of any duty, and I checked with the inspector, and he told me he had been in office for thirty years, and there never had been any duty on rough sapphire material; that there was no duty. I informed Mr. Peterson that I thought we had better make a statement to the court to that effect.

Q. By Mr. Peterson: Did you pay any duty to the United States government upon any of the material that you brought in?

A. At what time do you mean?

Q. When you brought it in.

A. At various other times.

Q. When you brought the material, the subject of this litigation, into the United States, did you pay any duty to the United States government on it?

A. I never brought this in. I said the Queensland government brought it in.

Q. You paid no duty at all?

A. No, sir.

Q. Do you know of any duty that was paid?

A. No, sir.

Q. Mr. Heiser, in August of 1928 you were married, were you not?

A. August, 1928?

Q. Yes.

A. Yes, sir.

Q. Your wife's name was Mrs. Lillian Heiser?

A. Yes, sir.

Q. You would, of course, recognize her signature, I take it?

A. Yes, sir.

Q. I will identify the signature. I will ask you if, at the bottom of this yellow sheet that I am now exhibiting to you, the signature, Mrs. Lillian Heiser, is the signature of your wife.

A. I think it is, sir.

Q. You know your wife's signature, don't you?

A. Yes.

Q. It is your judgment that is her signature?

A. Yes; it looks like it, sir.

Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?

A. The gem material referred to, yes, sir.

Mr. Peterson: This document will be offered in evidence at this time as Defendant Woodruff's next exhibit.

Mr. Meyberg: Objected to as incompetent, irrelevant and immaterial, as to any issue involved here.

Mr. Peterson: It is for the purpose of proving value.

The Court: You had better pass it up.

Mr. Peterson: I will, your Honor.

The Court: What does it purport to be?

Mr. Peterson: It purports to be a valuation signed by this gentleman's wife, upon the merchandise in controversy here.

The Court: What is the nature of the document?

Mr. Peterson: It is a storage receipt, isn't it?

A. You didn't let me read it; you just showed me the signature.

Mr. Peterson: It is a storage receipt, a bill of lading and storage receipt.

The Court: Issued by a steamer?

Mr. Peterson: It should show at the top.

The Court: It appears to be received from C. A. Lobri, to be forwarded, in whole or in part on the steamer Havre, or such other steamer, and so forth—very well.

Mr. Meyberg: I think it is a bill of lading, your Honor.

Mr. Beveridge: We are offering the receipt and bill of lading.

Mr. Meyberg: Is it a receipt also?

Mr. Beveridge: Yes.

Mr. Peterson: I want the bill of lading marked as the first exhibit.

The Clerk: That will be Defendants' Exhibit E.

Mr. Meyberg. You are calling that a bill of lading.

Mr. Peterson: For the purpose of the record—it may be something else, but for the purpose of the record, so that the court may be acquainted with what this shows, it shows 36 sacks of mechanical corundum of a weight of 4325 pounds. The person signing it appearing to be Mrs. Lillian Heiser, and her statement as to the value of the shipment is $500.00, and the document also shows that the shipment was not insured. If you have anything else you want to call to the court's attention, I will let you do it.

Mr. Meyberg: Where did you read from, Mr. Peterson, that there was any statement that the value of the shipment was $500.00?

Mr. Peterson: Value of shipment stated by shipper, $500.00.

Mr. Meyberg: $500.00 is stamped, and an extra 75 cents paid for insurance on it.

Mr. Peterson: And it says: "Not insured."

Mr. Meyberg: It says, "Shippers desiring carrier to insure at expense of shipment, owner or consignee, must show shipping value and sign below." It is signed C. A. Lobri by Mrs. Lillian Heiser, and it purports to be a bill of lading.

Q. By Mr. Peterson: I will ask you whether you have

ever seen the document which I am now exhibiting to you, and which seems to be entitled: Receipt for freight. Do you recall that you have ever seen that document before?

A. I am not sure, sir.

Q. Will you look at it and see whether you can be sure?

A. No; I don't recall having seen that before.

Q. You wouldn't say whether you did or did not?

A. No. Someone signed my signature there. That isn't my signature.

Q. That isn't your signature?

A. No, sir.

Q. But you recognize the weight? You recognize over here the letters 35 sacks of mechanical ore?

A. Is that 35, sir? It looks like 36 to me, or 26. It is not very clear.

Mr. Meyberg: It speaks for itself, doesn't it, Mr. Peterson, whatever it is?

Q. By Mr. Peterson: You recognize the weight, 4325, do you?

A. I don't know what you mean.

Mr. Meyberg: I object, may it please the court, to the question is unintelligible: You recognize such and such as such and such.

The Court: This proceeding is unintelligible for the court. What have you got there?

Mr. Peterson: I will straighten up the record now. I should not have talked to him that way. I have shown him a receipt for freight delivered, which shows that there was received from the Pacific Electric Railway certain sacks of mechanical ore, of a weight of 4325 pounds, and I have endeavored to have the witness identify, if he can, that document.

A. I can't identify it.

Mr. Peterson: He says he couldn't do so, so I shall not pursue it. I will, however, ask that that be marked as an exhibit for identification at this time.

The Court: Very well.

The Clerk: Defendants' Exhibit F for identification.

The Court: What was that other document?

The Clerk: E, your Honor.

Q. By Mr. Peterson: In the bankruptcy proceeding, Mr. Heiser, of the Golden State Gem Company, you filed a claim for the value of this material that is here in controversy, did you not?

A. No.

Q. You never filed any claim at all?

A. No. My brother-in-law did. I was in London for that period, Your Worship.

Q. A claim was filed on your behalf, by your brother-in-law?

A. My brother-in-law filed a claim, that is correct.

Q. Did you authorize him to do so?

A. I was in London at the time.

Q. I am asking you whether, by any correspondence or otherwise, you authorized your brother to file a claim?

A. I don't think that particular claim.

Q. Did you later?

A. I came over to America from London, I think, two years later.

Q. I am just asking for the facts. If you never authorized your brother to do anything in this connection for you, you may say so.

Mr. Meyberg: I object to that as calling for a conclusion.

The Court: Proceed. Answer the question.

A. I don't recall doing so.

Q. By Mr. Peterson: Would you say that you did not do so?

A. I cannot recollect, sir.

The Court: What the court is interested in, Mr. Heiser, is this:—I haven't the remotest idea what this claim is—a claim apparently was filed in some bankruptcy proceeding. Very well. It purported to be, I guess, on behalf of Mr. Heiser?

Mr. Peterson: That is my understanding.

The Court: The question is, did you, impliedly or otherwise, authorize it?

A. I don't recall doing so, sir.

Q. What did you do afterwards? Did you ever disavow the claim?

A. When I came back here I tried to make the claim, Your Worship, and Mr. Moss, I think it was, disallowed the claim.

The Court: That will be enough. The question is whether, in any manner at all, you were a party to the making of that claim. Proceed.

Mr. Peterson: And his answer, as I take it, was that he was not; that his brother did it. Is that the way your Honor heard it?

The Court: He said his brother-in-law made it in his behalf, and he didn't get back until two years afterward.

Q. By Mr. Peterson: But you never disaffirmed or denied it?

A. No, sir.

Mr. Meyberg: If I may suggest, I think if is the word "authorized."

Mr. Peterson: I think we are all clear.

The Court: We are not going to dispute about the meaning of the word "authorized."

Q. By Mr. Peterson: I think you said that Mr. Woodruff did purchase from you about $2000 worth of this material and paid you for it?

A. Which material are you referring to, sir?

The Court: What?

A. He said this material. I don't know what he is referring to.

Mr. Peterson: I am referring to any of the material which was shipped down from San Francisco, and which is the subject matter of this litigation.

A. No, sir; I didn't say that.

Q. I am asking you if you did.

A. He never purchased anything from—yes, he purchased something from me, but not that material.

Q. In other words, so that we may be clear, and not at cross purposes, Mr. Woodruff did not purchase any of the material that was sent down from San Francisco by you?

A. I had gems sent down from San Francisco at various periods. Does Mr. Peterson mean personally, that came down on this invoice, or does he mean stuff that came down at other periods? Because this was all rough gems.

Q. Did Mr. Woodruff ever purchase from you, and pay you, for any of the gem material described in your complaint?

A. No, sir.

Q. Did you ever sell any of the gem material to anyone, the gem material that was shipped down from San Francisco?

A. In that shipment?

Q. I am referring to the material set forth in your complaint.

A. No, sir.

Mr. Peterson: With reference to the bankruptcy claim, Mr. Beveridge was engaged in that on different phases of that litigation. Would you permit him to ask a few questions on that?

The Court: Is there a bankruptcy claim?

Mr. Peterson: There was a bankruptcy claim. Yes. Have you got it here?

The Court: Possibly you can agree on the amount of the claim and value.

Mr. Beveridge: Do you want to stipulate he filed a claim for $30,250, in bankruptcy, through a power of attorney to his brother-in-law?

Mr. Meyberg: If the court holds that is competent, yes, I will stipulate with regard to it. I think those are the correct facts. I don't want to stipulate that it go in evidence.

The Court: Under the circumstances I draw the conclusion, the inference, that the claim was filed on behalf of the witness.

Mr. Meyberg: The claim was filed in behalf of the witness, your Honor, for $30,000 and some odd dollars, for certain material; for certain rough gem material, or, rather, rough sapphire material, whatever it was.

The Court: It would facilitate matters very considerably if you had the claim.

Mr. Beveridge: The claim was disallowed. He was allowed to withdraw it, after he did not appeal, after the claim was denied by the Referee in Bankruptcy.

The Court: That is what the court is interested in. It is in the claim itself. You don't have it there?

Mr. Peterson: No. It seems to have been withdrawn from the bankruptcy file. We can't find it.

Mr. Meyberg: Have you any record of the order permitting it to be withdrawn?

Mr. Peterson: I have not.

Mr. Meyberg: Do you know that it was withdrawn by any order?

Mr. Peterson: Only what Mr. Beveridge says.

Mr. Meyberg: I do that, because I will take Mr. Peterson's word for it.

The Court: The record is going to be very considerably complicated, I am afraid. I don't care to hear from anybody except Mr. Peterson now, and I will conduct my conversation with Mr. Peterson. My suggestion, Mr. Peterson, is that the claim itself be presented, be shown, but you say that that cannot be done; you say that it was filed, and the value given as $30,000. Does Mr. Meyberg agree that such was the amount of the claim?

Mr. Meyberg: I believe that the claim was $30,000 or $30,250. Which was it, Mr. Peterson?

Mr. Peterson: Yes; I have proof that the amount of the claim was $30,250.

The Court: The next question is: Is the subject of the claim the identical matter that we are inquiring about here?

Mr. Meyberg: I happen to know it is not, your Honor, but Mr. Peterson should interrogate the witness with regard to it. He will know.

The Court: That is the next step.

Mr. Peterson: We will endeavor to do so.

Q. Mr. Heiser, you were not here, I understand, when the claim was filed for you?

A. That is correct, sir.

Q. Did you thereafter see the claim that was filed for you?

A. I came back in 1932.

Q. Mr. Heiser, the question is plain, and we will get along very well if you will just answer it: Did you see the claim that was filed for you?

A. Yes, sir.

Q. Will you tell us—

A. I say yes: I don't mean I saw the claim in court. Mr. Barstow notified me, the attorney of Mr. Calvin Smith, notified me that he had notified Mr. Lobri that the industrial sapphires were taken from the vault by Mr. Woodruff. That's why the claim was presented there.

The Court: I don't care for that. Confine your answer to something relevant to the question.

Q. By Mr. Peterson: Did you actually see the claim that your brother procured to be filed for you in the bankruptcy court, in the amount of $30,250?

A. Not to my recollection.

Mr. Peterson: All right. Then I guess that clears that up. There are no further questions on cross examination.

The Court: Any redirect?

Redirect Examination.

Q. By Mr. Meyberg: Mr. Heiser, directing your attention to Defendant Woodruff's Exhibit E, that is noted in there as mechanical corundum ore.

The Court: What?

Mr. Meyberg: Corundum. I will ask you whether or

not that is a customary method of shipping all types of sapphire material in your business.

Mr. Peterson: I object to that upon the ground that this is not a matter of custom. This as a matter of what happened in this particular case, and it is incompetent. We are concerned with what this witness did; not what the custom might have been or might not have been.

The Court: That is very true. At the same time, if material of that kind had this trade name it would be proper to show it. That is what you are trying to show?

Mr. Meyberg: Yes; exactly, your Honor.

The Court: Objection overruled. Let the witness answer.

A. Yes, sir.

Q. By Mr. Meyberg: Do you know whether or not that was the general classification, permitted by the shipping companies?

A. Yes, sir.

Mr. Peterson: Just a moment. Let me interpose my objection. That question is objectionable. We are not concerned with what the shipping companies permitted, which would be hearsay as to Mr. Woodruff. As to what the witness did it is competent; otherwise it is not.

The Court: I thought it related to supplementing his previous testimony about the custom. I don't think you need show that the steamship company permitted it, if it was the custom.

Mr. Meyberg: I think that is correct. I withdraw the question.

Q. Has it been a custom in your business to ship sapphire material, both rough and cut, under that heading?

A. Yes, sir.

Q. And it is so listed at the time of the shipping?

A. Yes, sir.

Q. Does the shipment, as a custom, in your business, and the labeling of the material under that heading—does

that have any reference to the value of the material in your business, as a custom?

Mr. Peterson: I object to that upon the ground that it is hearsay.

The Court: It calls for the conclusion of the witness. In fact, I guess that is the ultimate fact for the court, isn't it? Objection sustained.

Mr. Meyberg: May I just make one suggestion, your Honor?

The Court: My suggestion would be that the witness enlighten the court as much as he can on this particular shipment, this particular lot of material.

Q. By Mr. Meyberg: Did you understand that question?

A. Yes.

The Court: Mr. Meyberg, I suggest that you turn the witness loose. Conduct the examination.

Q. By Mr. Meyberg: I direct your attention to the valuation of $500 stamped and written on that bill of lading. Will you tell us what that means in your business, or the purpose of it, if you know?

Mr. Peterson: I object to that upon the ground that the document speaks for itself, and it calls for a conclusion.

The Court: Objection sustained. It would be irrelevant.

Q. By Mr. Meyberg: In your business, in the last twenty years have you customarily shipped back and forth quantities of gem material?

A. Yes, sir.

Mr. Peterson: Just a minute—

The Court: That question may be answered.

A. Yes.

Q. By Mr. Meyberg: In so doing, in your business, as a matter of custom, do you place the value, the actual value of the material shipped on the way-bill?

A. No.

Mr. Peterson: I object—

The Court: Let the objection come before the answer.

Mr. Peterson: I object, your Honor, that what he does would be hearsay and immaterial. We are not concerned with his custom, it not being shown that Mr. Woodruff knows anything about his custom, and is not bound by any custom he might have. The force of my objection goes to what he does as a matter of practice. We are here concerned with what he did.

The Court: Overruled. Let the answer stand. He said no.

Q. By Mr. Meyberg: Was the value of that shipment in excess of $500, Mr. Heiser?

A. Yes.

Q. What was the value of that shipment, the true value of it?

Mr. Peterson: Objected to upon the ground that the proper foundation has not been laid for the asking of this question.

The Court: In what respect?

Mr. Peterson: Because he hasn't told us what was in the sacks altogether. However, I will withdraw it. It is true we haven't definitely identified it.

The Court: Very well.

A. $164,000.00.

Q. By Mr. Meyberg: Do you know the reason for placing—don't answer the question until Mr. Peterson has had an opportunity to object, if he wishes to—Do you know the reason for placing the $500 figure on that bill of lading? That calls for a yes or no answer.

Mr. Peterson: I won't object, if he wants to say yes or no, but I will wait for the next question.

A. Yes.

Q. What was it?

Mr. Peterson: Now, we object to that upon the ground

that it is not material to any of the issues here. The document speaks for itself. The evidence is before the court.

The Court: Overruled.

Mr. Peterson: Note an exception.

A. If I insure a package for $5,000, it has the same insurance protection as if I insure it for $50,000, or a half a million; it has the same protection in this country.

Q. By Mr. Meyberg: What do you mean by that?

A. I mean it is our protection; if you value it at $500 they put it in the same safe deposit, as where they put bonds and other material. Another reason, it stops pilfering. If you put "gems" on and a high value, you are liable to lose it by pilfering.

Q. Has that been the custom in your business, to do that?

A. Yes, sir.

Q. Now, Mr. Peterson asked you with reference to something that you had sold Mr. Woodruff. What was it that you had sold to Mr. Woodruff, and when?

A. Opal doublets, in July, 1928.

Q. Was that in the raw; or was that cut?

A. They were finished, sir.

Q. They were finished?

A. Yes, sir.

Q. Was it cut out of any part of the material mentioned in this complaint?

A. No, sir.

Mr. Meyberg: I think that is all.

Recross Examination.

Q. By Mr. Peterson: I want to be clear about this insurance business. My understanding of your explanation for putting the $500 insurance value upon this property was that if one were to insure it for its real value that would be apt to attract perhaps attention to the fact that there were valuable jewels there, and someone might come in and get them?

A. That wasn't what I said.

Q. What did you say?

A. I said they received the same protection if insured for $500 as if insured for a larger amount.

Q. Do you mean to say that if you insure a consignment of jewels for $500 with an insurance company, and have that insurance policy, and they were worth, say, $500,000, and they were stolen, or taken, or destroyed, that the $500 policy would cover the $500,000 value?

A. That is an entirely different conception. My contention is, and I refer to the case of people that are under bond, and who know valuable stuff, whether it is $500 or $50,000, it has the same protection.

Q. I don't quite understand you.

A. They have certain people placed under bond, in charge of valuable property, in whose possession it is when it is in transit, and these men are all responsible, and if I had them valued at $50 or $50,000, they would receive the same care.

Q. So we come back to the fact that this valuable shipment of gems, jewelry material, was insured by you for $500?

A. It was not insured by me. My wife sent it in my behalf.

Q. The fact is that when that stuff was moved, it had a $500 policy on it?

A. Three years ago I bought a policy on gems from the custom house for London, and seventy-two thousand odd dollars worth were shipped by the American Express to the custom house in San Francisco and were insured for only $500. I have the receipt in Mr. Meyberg's bag.

Mr. Meyberg: Those were shipped in the same manner, on the same valuation?

A. Yes, sir; exactly the same.

Mr. Meyberg: That is all.

The Court: Let me see Exhibits E and F. Mr. Heiser, this document, whatever it appears to be, a receipt—received by Los Angeles Steamship Company, hereinafter called the carrier, from E. A. Lobri, dated August 7, 1928—tell me all about this. Who is Mr. Lobri?

A. Mr. Lobri is my wife's brother-in-law, sir.

Q. Your wife's brother-in-law?

A. Yes, sir.

Q. Where was this sent from?

A. San Francisco.

Q. And to Los Angeles?

A. Yes, sir.

Q. By steamer?

A. Yes, sir; that's the steamer receipt, apparently, the Yale.

Q. Where were you at the time?

A. I was up here, sir. I was in Los Angeles. I was up here in Los Angeles. I had asked that the things be shipped on to me.

Q. And they were?

A. Yes.

Q. Just how did they ship it?

A. Apparently by boat, sir.

Q. How was it packed?

A. In bags and tins, sir.

Q. What kind of bags?

A. Australian corn bags; something like you would carry your wheat in here only a little coarser material.

Q. Such as they sack wheat in, in Australia?

A. Yes, sir.

Q. Is that the precise shipment that is in controversy here?

A. Yes, sir, your Worship.

Q. Industrial articles?

A. Yes, sir.

Q. Does that include 35,000 ounces, more or less, of mechanical industrial, rough, sapphires, and so forth?

A. Yes, sir.

Q. Did you have any insurance on that property at the time that it was being shipped on the steamer?

A. I think I had an insurance, sir, at that time.

Q. I must know what the fact is.

A. I think we carried insurance on it, sir, a truck policy in Lloyd's. I carried a policy in those days, a Lloyd's policy; protection against all merchandise, from London.

Q. No matter what it is?

A. Yes; it's a truck policy.

Q. You say you think you had a policy?

A. My brother-in-law generally kept those up for me, but that is an Australian policy. I am pretty sure it was still alive, because I left a month after that for London.

Q. Do you know how they were carried on the boat?

A. No, sir.

Q. Were they carried the same as so many sacks of flour or wheat, or something of that sort?

A. They would be carried something like they carry the bar silver; that is, they carry it on a special van. I think that is the way they were carrying it. I am not sure.

Q. They ship bar silver—you see them pile it on the ordinary express trucks?

A. That's right.

Q. That is the way it used to be. This is described as 36 sacks of mechanical corundum ore—"ore" in parenthesis?

A. Yes, sir.

Q. What was this concern against which a claim in bankruptcy was filed?

A. The Golden State Gem Company.

Q. The Golden State Gem Company? That is the corporation that originally, according to the allegations of the complaint, was the agency through which this material was to be marketed, I believe, is that correct?

A. Yes, Your Worship.

Q. Just who filed this claim in the bankruptcy matter?

A. At the beginning, sir?

Q. At the beginning.

A. I was out of the company then. I am not sure. It was either Mr. Smith or Mr. Woodruff.

Q. Both counsel were asking you about it?

A. Yes, sir.

Q. I have reference to the claim mentioned in the questions asked you.

A. Mr. Smith or Mr. Woodruff; I am not sure which one filed it in bankruptcy.

Q. What is the history of this bankruptcy claim? The witness was asked if the claim wasn't filed in his behalf. What is the subject of that claim?

A. The lawyer for Mr. Smith and Mr. Lobri, by brother-

in-law, told him the identical sapphires were taken out of the United States National Bank—

Q. We had better avoid what is unnecessary. I said, What was the subject of the claim? Was it these identical stones?

A. We did not know that the blue sapphires, the zircons, the opals and the jade had gone, not until I came back from London.

Q. That however, is the bulk of this, wouldn't you say, the 35,000 ounces?

A. Yes; the greater portion, but not so much in value.

Q. Who is your brother-in-law, and where is he now?

A. Mr. Lobri; I think he is in Montana. He travels through the country, sir.

Q. You are friendly with him?

A. Oh, yes; quite friendly.

Q. He filed the claim, if not without authorization from you, at least with your consent, with your willingness, for the amount of the sapphires, is that correct?

A. Yes; he worked in the things for me whilst I was out of the country.

Q. Where did he get his idea as to their being worth? What was it?

Mr. Meyberg: $30,250.

A. He received a letter to that effect from Mr. Smith's attorney, Mr. Barstow.

Q. Was Mr. Barstow your counsel at the time?

A. No, sir. I had retained Mr. Beveridge as my counsel when I came up here, but some one told me he was being retained also by Mr. Woodruff.

Q. That is not necessary to ascertain the value of the gems?

A. No, sir.

Q. So we will leave that out.

Mr. Meyberg: May I have the bankruptcy file, your Honor?

Q. By the Court: Do you know what the basis of your brother-in-law's action was?

A. Just that he received a letter that 30,000 ounces of

identical sapphires were taken from the United States National Bank, and he figured them at $1 an ounce.

Q. How long had he been your brother-in-law?

A. About eight or nine years.

Q. Were you associated with him in business?

A. No; he is in an entirely different business, but he used to help me, and attend to things whilst I was out of the country.

Q. What line of business was he in in 1932? Is that the date of the bankruptcy proceedings?

Mr. Meyberg: About that time.

A. He was in cloak, dressings, and linen material and things of that sort.

Q. Nothing associated with mineralogy?

A. Nothing at all about mineralogy.

Q. Apparently he was connected with this shipment down here?

A. I think he was just helping my wife.

Q. Where is your wife?

A. She is in San Francisco.

Q. You are still, of course, in the same business?

A. Yes, Your Worship.

Q. You are not a resident of Los Angeles?

A. No, sir.

Q. What place do you claim is your residence?

A. London and Australia.

Q. You are a native of Australia?

A. No; I am a native of London, sir.

The Court: No further questions.

By Mr. Meyberg: Q. Mr. Heiser, did Mr. Beveridge, attorney for Mr. Woodruff here, represent you in connection with the prosecution of that claim at one time?

A. Yes, sir.

Mr. Meyberg: We offer the judgment docket of the bankruptcy.

The Court: What claim are you referring to?

Mr. Meyberg: The claim of this $30,250, your Honor.

The Court: Do you mean against the bankruptcy estate?

Mr. Meyberg: Yes, your Honor.

Mr. Peterson: Let me see what it is, Mr. Meyberg. We are not trying Mr. Beveridge.

Mr. Beveridge: I can clear that up. It is all right, your Honor; no objection.

Mr. Meyberg: M. E. Heiser, by E. A. Lobri, his attorney in fact, as the claimant, filed February 20, 1930, under the allowed claim, it says: Disallowed. Amount $30,250.00. Attorney Robert L. Beverly and S. A. Macfarland. Just that part of it we will put in evidence.

Mr. Peterson: For the sake of the record—

The Clerk: Is this to be marked, your Honor, Plaintiff's Exhibit?

Mr. Meyberg: It may be marked Plaintiff's Exhibit next in order.

The Court: Yes; let it be marked.

The Clerk: That will be Plaintiff's Exhibit No. 7.

Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

A. Yes.

Q. And they have been in the country ever since?

A. Yes.

Q. You were there in charge of that exhibit?

A. Yes.

Q. Where were they between 1916, say, the beginning of 1916, and 1928?

A. They were the majority of the time in the Wells Fargo Bank.

Q. In San Francisco?

A. Yes, sir.

Q. They were owned by you all the time?

A. Yes, sir.

Q. How did it come that they were lying there without action on the part of anyone?

A. I did not need them. It was a reserve, sir. We mine the stuff in Australia and ship it to different parts of the world, and don't touch it. For instance, in the Lincoln vaults I had a parcel for ten years, and didn't touch it. I have a parcel in London we don't touch. The industrial sapphire is very important in time of war; one of the most important things in connection with war, sir. That is why I have been keeping these reserves in different parts of the world. In fact, they can't wage an important war without sapphire; which is used, for instance, in the rifling of cannons. They call that rifling in this country. They call it worming there.

Q. At any rate, they had been lying here about 12 years without any action?

A. Yes. I was mining in Australia, and was putting dredges up in Australia.

Q. Do you recover these sapphires by dredging?

A. There are two processes. I invented a process which enables you to save by the dredging process.

Q. How can you tell sapphires from anything else?

A. We sight them by sifting like you sift flour; you shake it under water, and it has a specific gravity of 3½, and you have a peculiar shake with the wrist. You turn the sifter, and the sapphires and the zircons, by centrifugal force are brought to the center. You catch diamonds in the center also this way. That's the only way in vast production.

Q. Based on weight?

A. Yes. You shake it, and give it a turn with the wrist, and each time you shake it the centrifugal force brings it to the center. That is, in South Wales, but in Queensland they do it with a rotary process. It is a knife machine.

Q. What would you say is your place of business at the present time—London?

A. Yes; London. If anyone wants to find me in Australia they will cable to London and London will notify me immediately.

Q. About what proportion does your business reach annually?

A. In the last few years it hasn't been so good. Gem cutters in this country haven't been able to purchase for cash, and the majority have been going bankrupt so much

You cannot be selling without getting cash. In Germany, almost the same thing prevails. Of course, the market is in Switzerland and France today. That has been conducted from England.

Q. If you have no objection for any personal reason, I would like to know about what proportion of your business—how much you do in a year.

A. The last few years there has been very little in rough sapphires. There is a movement now from Europe, and the industrial sapphires I may be able to dispose of will run 20,000 to 25,000 ounces.

Q. You handle other things than sapphires?

A. Sapphires, opals, zircons, emeralds. The lapidaries in this country have gone back the last five years considerably. There is hardly a lapidary in this country with 12 men cutting, whereas in 1928 there were factories with 150 or 200 all over the country.

Q. By the Court: You are not confining yourself to sapphires?

A. All classes of gems.

Q. But the principal use of sapphires now is industrial?

A. There is a very, very large industrial use for sapphires, yes.

Q. They are used, however, for gems—ornaments?

A. Yes. They are about the third most popular stone today.

Q. Are you familiar with what is termed today as costume jewelry?

A. Yes.

Q. What has been the effect of that?

A. That is what ruined the business.

Q. When did that start?

A. That started in 1926, in New York, and it spread right across the country. Shore & Company were the first people to start it in New York, and they opened about 20 or 30 stores, and the Hiller people started, and they introduced it to the department stores, and the ladies caught onto it.

Q. That depressed the market on all kinds of semi-precious stones?

A. Yes.

Q. Including diamonds?

A. Yes; including diamonds. Going back to diamonds, in 1928 you had to pay $250 a carat, and you can buy the same for $125 today quite readily.

The Court: That is all.

Q. By Mr. Meyberg: Mr. Heiser, you carry today a stock of cut sapphires and emeralds, do you, for sale?

A. Yes.

Q. Do you carry them with you right here?

A. I have a few here, yes.

Q. What is the value of that stuff?

Mr. Peterson: I object to that upon the ground that it has no bearing upon the issues in this case; it has nothing to do with the matter we are concerned with here.

The Court: Overruled.

Mr. Peterson: Note an exception.

A. About $70,000.

Q. By Mr. Meyberg: $70,000?

A. Yes. That is what I have in America now.

Q. Do you have some of those gems, cut, with you here in the courtroom?

A. Yes; in back yonder.

Mr. Meyberg: Would the court like to see some of his present stock?

The Court: No; I don't care to see that at all.

Mr. Meyberg: I offer, may it please the court, a circular obtained from the Library of Los Angeles, marked: Information Circular, Department of Commerce, Bureau of Mines, put out by the United States Government. I would like to read in evidence from it, in referring to a question or two to the witness, on the subject of the court's interrogation—just a few lines from it.

Mr. Peterson: Let him make his offer.

Mr. Meyberg: I am now making the offer of this Department of Commerce, Bureau of Mines, United States Government circular.

Mr. Peterson: You are offering the circular in evidence?

Mr. Meyberg: I would like to read from it, and you may be permitted to read from it if you wish, into the record.

Mr. Peterson: I am going to object to the offer in evidence of this document. It purports to be a mimeographed circular; not even original typing; not signed by anybody; no showing that the man that I represent ever knew of its existence. It has no probative value here at all. Counsel merely is bringing a document here without any identification whatever. You can't bind the defendant or plaintiff, or anyone else, with that sort of evidence. I am objecting to it upon the ground that no foundation has been laid for it, and that it is hearsay.

The Court: This purports to be at least a circular issued by the United States what—

Mr. Meyberg: Department of Commerce, Bureau of Mines, information circular.

The Court: It is a public document?

Mr. Meyberg: It is a public document, your Honor.

The Court: Such are admissible in evidence, I believe.

Mr. Peterson: I don't think that you can bring in a mimeographed circular of any kind, even if it is put out by the President, without showing that the parties to the case knew something about it.

The Court: It is like a weather-report; if it is authentic it is admissible. That will be my ruling.

Mr. Meyberg: This is information which the government issues, and so far as my information is concerned from the Library—I would call attention to the fact that Mr. Zimmer, one of their witnesses, stated from the witness stand that he received this from the government; I read from it, and he identified the reading; said he was familiar with it.

The Court: I remember you reading from some document.

Mr. Meyberg: This was the circular.

The Court: Is it your information that is the only form in which it is issued?

Mr. Meyberg: That is the only form in which it is issued. It is marked IC6471, August, 1931. It comes from the records of the Public Library.

Mr. Peterson: My position is not that it is not a document put out by the government. My objection is, so far as the persons I represent are concerned, so far as the issues in this case are concerned, it is hearsay and not competent.

The Court: That is true, in a way. At the same time, suppose we were here trying the question of the value of wheat, for instance, wouldn't a circular issued by the Department of Agriculture, for whatever relation it might have to the question, be admissible? I rather think so. The objection will be overruled. Let it be admitted.

Mr. Peterson: Are you offering the whole thing?

Mr. Meyberg: May I suggest that you may read any portion into the record you wish. I will read whatever I wish. It will be very short.

The Court: It may be placed in evidence, of course. It is only the material part, naturally, that you want to refer to.

Mr. Meyberg: I would like to withdraw it and return it to the public library, if I may, after I read what I wish and after you have read whatever portion you care to into the record.

Mr. Peterson: I can assure you I am not going to read any of it, but I would like to have an exception shown to his Honor's ruling.

The Clerk: Plaintiff's Exhibit No. 8.

The Court: I don't care for any reading.

Mr. Meyberg: I should like to ask the witness a question

in reference to it. Mr. Heiser, referring to Plaintiff's Exhibit No. 8, and particularly to paragraph 9 of circular IC6471, it refers to New South Wales. In 1927, the Heiser Burma Sapphires (Ltd.) started operating a dredge on sapphire ground near Inverell, in New South Wales, treating the dirt in sluice boxes. Its operation proved so successful that the company began operating its own cutting plant and developing a sapphire cutting machine. Sapphires totaling 3118 ounces in weight were produced in New South Wales in 1927. Was that your company?

A. Yes, sir.

Q. Are you the Heiser—

The Court: Mr. Meyberg, I wouldn't believe that the document is evidence of what this plaintiff did in New South Wales. This document is evidence of market conditions, or such things as the government of the United States has within its jurisdiction, but I wouldn't regard it for that. It is not admitted for any such purpose as that, to show how good a man this plaintiff is, or the proportion of his business in New South Wales. Manifestly, it would be the rankest kind of hearsay evidence of a fact like that, would it not?

Mr. Meyberg: Your Honor, it is a report of the United States government on various mining operations throughout the world, pertaining to sapphires, and has prices in it also.

The Court: What I noticed about it, and the reason why I admitted it was because it discussed production in general, and in the sapphire market.

Mr. Meyberg: Yes, particularly in this field.

The Court: But as proof of a company Mr. Heiser is associated with, whether they were successful or not, I think that is going a little too strong, or too far. I don't accept it as evidence of anything of that sort, manifestly.

Q. By Mr. Meyberg: Mr. Heiser, to clear up the question of the bankruptcy action, the bankruptcy action which has been referred to here was the Golden State Gem Company of California, was it not?

A. Yes, sir.

Q. That was not a company in which you were interested?

A. No, sir.

Mr. Meyberg: No further questions, your Honor.

Q. By Mr. Peterson: If I understood your testimony correctly, you stated that the jewelry business has been ruined by the costume jewelry business, is that right?

A. Yes, sir.

Q. That ruination of the jewelry industry commenced, I think you said, in 1926?

A. I said it was introduced in 1926.

Q. It commenced then?

A. Yes, sir.

Q. And then it progressed?

A. Yes.

Q. I think you also stated that industrial sapphires, such as are described in your complaint, have very important uses in time of war?

A. Yes, sir.

Q. Now, the industrial sapphires described in your complaint were at least brought into this country, in 1915?

A. Yes.

Q. Did you sell any of those to the European countries for use in time of war?

A. No; I shipped from Australia and London direct.

Q. Did you yourself make any sales to these warring countries of this industrial sapphire?

A. From this particular parcel?

Q. Yes.

A. No, sir.

Mr. Peterson: That is all.

Q. By Mr. Meyberg: Did you from any other parcel?

A. Yes.

Q. In what quantities?

A. 1800 ounces, 5000 ounces, 15,000 ounces.

Q. Where did you make the shipments?

A. Some to New York. Mr. Jankower I shipped to.

Q. Any foreign countries?

A. Germany and Switzerland.

Q. Any others?

A. Berne, the Swiss French border, Paris, London; practically all the countries that consumed them.

Q. Were these stones mined by you, Mr. Heiser?

A. Yes, sir.

Q. The subject of this action?

A. Yes.

Q. In Australia?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 2 for identification—by the way, you have seen stones like that?

A. Yes.

Mr. Meyberg: May this be marked, this package of small sapphire material, be marked Plaintiff's Exhibit 2-B for identification?

The Clerk: 2-B for identification.

Q. By Mr. Meyberg: I direct your attention, Mr. Heiser, to Exhibits 2 and 2-B for identification. What are those?

A. Blue sapphires.

Q. With reference to the 1200 ounces of blue sapphires, that are part of the subject matter of this action, are those a representative lot of what those sapphires consist of?

A. Yes.

(Whereupon an adjournment was taken until Wednesday, June 28, 1939, at 10:00 o'clock a. m.)

Los Angeles, California, Wednesday, June 28, 1939, 10:00 A. M.

Mr. Meyberg: Mr. Peterson, I would like to have Mr. Woodruff go on the stand for a few questions. I notice he is not in court. Will you have him in court?

Mr. Peterson: I understand he is transacting some business, and I couldn't get him here this morning.

Mr. Meyberg: Can you have him here this afternoon?

Mr. Peterson: I don't know. Mrs. Woodruff tells me that she is not certain, but if you had let me know yesterday—

Mr. Meyberg: I did not notice that he was not in court yesterday. He had been in court while we started out defense.

The Court: What are you talking about?

Mr. Peterson: He is talking about putting Mr. Woodruff on, who is not here this morning. I told him if I had known he had wanted him to be used as a witness I would have had him here.

Mr. Meyberg: He had been in attendance here when we opened our defense. My attention was just called to the fact that he was not here, and I want to use him as a witness and ask him a few questions, and I want Mr. Peterson to have him come in.

Mr. Beveridge: Maybe we might stipulate to what he might say.

The Court: The gentleman referred to, Mr. Woodruff, was absent yesterday?

Mr. Meyberg: Yes. My attention was called to the fact that he was absent yesterday.

The Court: If you were an active young man you would have had a subpoena issued.

Mr. Meyberg: My attention was just called to it.

The Court: There is nothing before the court. Finish the cross examination of this witness.

Mr. Meyberg: Will you mark this?

The Clerk: This will be marked Plaintiff's Exhibit 2-C for identification.

Mr. Meyberg: It purports to be a small blue sapphire in the rough.

Mr. Peterson: What is that exhibit?

Mr. Meyberg: 2-C.

MAURICE EMANUEL HEISER recalled.

Redirect Examination.

Q. By Mr. Meyberg: Mr. Heiser, I direct your attention to Exhibit 2-C. Will you tell me what that is?

A. Blue sapphires.

Q. That's in the rough?

A. Yes, in the rough.

Q. I direct your attention to Plaintiff's Exhibits 2-A, -B and -C. What are those stones?

A. All blue sapphires.

Q. Australian?

A. Yes, sir.

Q. In the rough?

A. Yes, sir.

Q. How do those three samples compare with the 1200 ounces of sapphires that are described in the complaint?

A. They compare practically the same, sir.

Q. The 1200 ounces of blue sapphires that are referred to in the complaint, would you say that that is a fair sample of what they represent?

A. Yes; with the exception that there were a few larger blues in the other package.

Q. Would they be all together in that package, or be divided?

A. They would be mixed; some bags have large or small; some bags small sizes; others medium.

Q. But the 1200 ounces would be mixed stones of the same general character as these three?

A. Yes, sir.

Mr. Meyberg: Mark this next in order for identification.

The Clerk: This will be Plaintiff's Exhibit No. 2-D for identification.

Mr. Meyberg: 2-D consists of three separate stones.

Q. I show you Plaintiff's Exhibit 2-D, Mr. Heiser. State what that is.

A. Those are sapphires also.

Q. What kind of sapphires; what are they?

A. Australian sapphires. There are two rough; one cut.

One was cut by Mr. Zimmer. We had this half cut off, and this was a stone from the other end.

Q. Is that a fair example—or how would it compare with the 1200 ounces of blue sapphire referred to in the complaint?

A. Some are quite a lot larger than that.

Q. The same general class?

A. Yes.

Q. One of these is cut?

A. Yes; that is the one that is cut.

Q. And the piece that was cut was cut off of the large piece?

A. Yes.

Q. This piece being sawed in half, and this piece being cut out of the other half, is that correct?

A. Yes, sir.

Mr. Meyberg: Would your Honor like to see that? One is the cut stone, cut out of half of the same stone.

The Court: This is the uncut half?

Mr. Meyberg: That is correct, your Honor. The other half of the same stone that is cut. We will offer in evidence, may it please the court, Plaintiff's Exhibit 2, now marked for identification, A. B. C and D.

The Court: Let them be admitted.

Q. By Mr. Meyberg: Now, referring to Plaintiff's Exhibit No. 3 for identification, Mr. Heiser, what are those?

A. Rough Australian zircons.

Q. By the Court: What did you say they were?

A. Rough Australian zircons, Your Worship.

Q. By Mr. Meyberg: How does that compare with the zircon that is referred to in the complaint?

A. Very much the same, only there were some larger crystalline stones.

Q. And some smaller?

A. Yes. We have some very small ones here. They wouldn't be very much smaller than these.

Q. But generally that same type of material?

A. The same type of material.

Mr. Meyberg: We offer Plaintiff's Exhibit 3 for identification in evidence, your Honor, as Plaintiff's Exhibit 3.

The Court: Very well; let it be admitted.

Q. By Mr. Meyberg: I show you Plaintiff's Exhibit No. 4 for identification. What is that?

A. An Australian cut sapphire.

Q. Was that cut from the same general type of material as Plaintiff's Exhibit No. 2?

A. Yes, sir.

Q. Was that the same general type of material as referred to in the complaint, of the 1200 ounces of sapphires?

A. Yes.

Mr. Meyberg: We offer that in evidence as Plaintiff's Exhibit No. 4.

Mr. Peterson: Just a minute before you receive that. I would like to ask him a question.

Mr. Meyberg: No objection.

Q. By Mr. Peterson: This stone that you have here, it is marked Plaintiff's Exhibit No. 4 for identification. Did you cut that yourself?

A. No, sir.

Q. Did you see it cut?

A. I think I did.

Q. Not what you think. Do you know if you did?

A. Yes; I am sure I did.

Q. Where was it cut?

A. It was cut at my own place in San Francisco.

Q. Where?

A. San Francisco.

Q. When?

A. About ten months ago, a little over ten months ago.

Q. Who cut it?

A. I cut the stone, and one of my friends polished it.

Q. I asked you the direct question: Did you cut that stone yourself?

A. Cutting is one thing, and polishing is another. Do you mean polishing or cutting?

The Court: Who cut the stone?

A. I cut the stone.

The Court: You were asked the direct question: Did you cut that stone yourself, yes or no?

A. I cut the stone, yes. I didn't polish it, though.

Q. By Mr. Peterson: You cut it?

A. Yes.

Q. From what did you cut it?

A. From a piece of rough Australian sapphire like this.

Q. You cut it ten months ago?

A. About ten months ago.

Q. Where was the rough Australian sapphire up to the time that you cut this stone in San Francisco ten months ago?

A. Where was it?

Q. Yes.

Mr. Meyberg: Do you mean the rough sapphire from which he cut that?

Mr. Peterson: That's right.

A. It was in San Francisco.

Mr. Peterson: Where?

A. It was in San Francisco.

Q. Where in San Francisco, Mr. Witness?

A. It was in one of the banks. What time do you mean in San Francisco? At any particular time?

Q. At the time you took the stone and either cut it or had it cut, where was the stone from which this exhibit was cut?

A. In San Francisco.

Q. It was under your custody and control?

A. That's right. I had merchandise up in Seattle, the end of last year, and I had some in Canada the early part of last year.

Q. It wasn't then any of the material that has been in storage down here on San Pedro Street?

A. No, sir.

Mr. Peterson: That is all I wanted to know.

Mr. Meyberg: We will stipulate it was not.

Mr. Peterson: He said it was not.

Mr. Meyberg: Mr. Peterson, we selected some material down at the warehouse the other day in agreement with Mr. Beveridge that it was to come up here, and I was to have Mr. Joseph down there yesterday morning at 9:30 to pick it up, with Mr. Woodruff, Jr. Mr. Joseph was down there and said Mr. Woodruff phoned that he would not allow it to come in. We had agreed to have it sent here by the warehouse, and Mr. Woodruff said he couldn't do that. Mr. Beveridge agreed he would see that he was there, or there was a release to come up here at 9:30 tomorrow morning. Is that correct, Mr. Beveridge, substantially?

Mr. Beveridge: I assumed, Mr. Meyberg, that you had abandoned the idea of using the samples. The entire day passed without your mentioning it again. If you want these samples they are there to have. All you have to do is to ask for them. They are there waiting for you, or your representative and a representative of the plaintiff can go down and get them. The only thing was we just wanted both sides to be there to see they were given the samples.

Mr. Peterson: We want to have Miss Bowman, at the Colvear warehouse send them up direct. Are you willing to do that now?

Mr. Beveridge: She thought that you had abandoned the idea.

Mr. Meyberg: Will you see that Mr. Woodruff gives an order?

Mr. Peterson: Of course, we will give an order.

Mr. Beveridge: We would rather have a court order.

Mr. Meyberg: If you say it is satisfactory, Mr. Peterson, you will see that it is done?

Mr. Peterson: Surely. We will have them up here. I will see that the warehouse releases them for you.

Mr. Meyberg: If you will send them up here I will pay for it.

The Court: Is there any further examination of this witness?

Mr. Meyberg: That is all.

The Court: Any cross examination?

Cross Examination.

Q. By Mr. Peterson: Just one question: The stones we were talking about, Mr. Meyberg and I, were some samples you picked out a day or two ago, is that right?

A. Yes.

Q. Those are the ones down at the storage place?

A. Yes, sir.

Mr. Peterson: I haven't any questions.

The Court: Mr. Meyberg, please explain, so that I will get it clear in my mind, what your colloquy was, which arose a few minutes ago.

Mr. Meyberg: We went down to the warehouse, at Mr. Peterson's invitation, day before yesterday afternoon, and we selected some samples of what was down there, and put them in an envelope.

The Court: Do you mean of the mechanical industrial rough sapphire?

Mr. Meyberg: Correct. We selected those samples to be brought into court. It was agreed with Mr. Beveridge and with Mr. Joseph, from my office—I was also there—that Mr. Joseph would come there at 9:30 tomorrow morning, and Mr. Woodruff, Jr., would be there, and they would release the envelopes of this material, and they would be brought into court. The warehouse actually required Mr. Woodruff's signature or authority before they would be released, and Mr. Woodruff said he couldn't release it at that time because he had to get authority from his father. Mr. Beveridge said he would see that it was done yesterday morning at 9:30. Mr. Joseph was at the warehouse, waiting and he was told that Mr. Woodruff would not release the stuff.

The Court: Just tell me what was said.

Mr. Meyberg: That they couldn't release the stuff.

The Court: Do you want it brought here?

Mr. Meyberg: Surely; we would like to have it brought here.

The Court: Are you asking that it be brought here now?

Mr. Meyberg: I am, your Honor.

Mr. Peterson: It will take half an hour to get it.

The Court: Very well. Take steps immediately to get it.

Mr. Peterson: A half an hour will be ample. I will have somebody go down with Mr. Woodruff.

Mr. Meyberg: I have no objection to his going down alone, if Mr. Woodruff will state that he will bring the envelopes intact. We will pay the charges.

Objectors' Exhibit RR-2.

State of California
Department of Investment
Division of Corporations

In the matter of the investigation and investigation of International Gems.

At a hearing held in the above entitled matter in the offices of the Division of Corporations, Los Angeles, California, on Tuesday, July 20, 1937, at 10 A. M., before Thomas J. Kelley, Assistant Commissioner.

Reported by Clare E. Cone.

• • • • •

Department's Exhibit No. 1.

Harry A. Goldman
Lawyer
Suite 1215 Stock Exchange Building
639 South Spring Street
Los Angeles
TUcker 1141

(Stamp)
Received
State Corporation
Department
Jun 23 1937
Los Angeles Office

Commissioner of
Corporations
State Building
Los Angeles, Calif.

June 22, 1937.

In re: Application of International Gems. Your Receipt Number 23000.

Sir: With reference to the Schedule of Proposed Operations, Exhibit "F" of the Application in this matter, this Schedule sets forth the operations for the six month period, but is not to be construed as inferring that the money shown as expenditures in said schedule is necessary before said operations can be commenced.

No money is necessary to commence operations for the reason that the gems to be turned over to the Corporation are of sufficient value and are of such ready sale in their present state that operations can be commenced immediately without the addition of any new capital; further, by reason of the fact that there is to be transferred to the corporation the factory now operated by Ted Zimmer, which is complete in itself, and which will afford the Company all of the necessary equipment to cut the rough gems.

Mr. Heiser's business in the past and at the present time has been merely in the sale of rough and finished gems of the same character as those presently to be transferred to the Corporation, and, therefore, by merely continuing his present operations, he will afford the Company sufficient assets to commence operations. The new financing will merely be used for the purpose of enlarging the scope of operations.

The maximum salary proposed to be paid out to any officer or employee of the Corporation will not exceed $100.00 per week until such time as the corporation is on a dividend paying basis.

Mr. Heiser has handed me a resume of his lifetime operations, and also the background of Ted Zimmer, which I am enclosing herewith as Exhibit "A" hereof.

May this letter and the exhibit be considered as an Amendment to the application heretofore filed in this matter.

Respectfully yours,

H. A. GOLDMAN.

HAG:BC

Exhibit A.

History of M. E. Heiser.

Born in London, 1888. Mother, Irish and English. Father, English.

Taken to Australia when five months old, arrived there at nine months old. Educated in Australia and England. Instructed in mining by *Profession* Robert Taylor.

At 16½ years of age discovered the gold fields of the Dee River, Queensland, Australia. In 1904 crossed to London, to study business in connection with gems, cutting, selling and crystallography. Then returned to Australia.

In 1913-1914, controlled the Queensland opals and represented the Government of that state at the Panama Pacific International Exposition, San Francisco, California. In 1915, as their gem and gold representative.

Stayed in America 1916-17-18, controlling Australian Sapphires, opals, emeralds and zircons on the U. S. A. markets.

In 1919 introduced into the School of Designs, Providence, R. I., the new method of opal cutting, which is my creation. This can be had in a book entitled "Jewelry and Designs by Rose and Cerani, Compiled in the School of Designs"—front pages mention reference of thanks to M. E. Heiser.

In 1919-20, discovered the new Burmah Sapphire Mine

and controlled that deposit; constructed dams across the Frazier's River, for conservation of water, in that district. I developed the mines and during this period completed and patented the only known method to save sapphires, rubies, zircons, emeralds and diamonds by a dredging process.

Returned to America to supply the demands in 1921. Contracted with the Big 4 in New York City to supply them all the gems that I could mine or procure for five years, and controlled a quarter interest of the voting stock of the Sapphire Mining & Cutting Corporation, 565 Fifth Avenue, New York, then returned to Australia.

In 1924 completed the Lobree Gem Cutting Machine, which enables inexperienced people to cut gems successfully in three months, and at one-fourth the present price. The old method takes 5 to 7 years to learn to cut, and is all by hand and judgment.

In 1928, tried to introduce into America the Lobree Gem Cutting Machine for the purpose of cutting gems in America in competition to Germany, Holland and Belgium.

In 1929, the introduction of the Lobree Machine was introduced into London by Mr. Heiser, and the gradual development of the machine and thought that the gem cutting should be done in England and the U. S. A., in competition to the foreign countries.

In 1930, discovered gold in Ireland, and emeralds. Prospected over the greater part of Ireland, which ultimately resulted in the Crown granting two leases over an area a *littmoe* more than 703 square miles.

In 1933, returned to California and joined up with Mr. R. W. Hanna of the Standard Oil. I formed the Engineering Gold Mining Guild of that State, and made a complete survey of the gold-bearing areas, and had an option from the largest land owners in the State, of potential mining property of 700,000 acres, with approximate gold content of $300,000,000. This area was completely surveyed, mapped and checker-boarded, and is all lying dormant on account of the financial crisis of that year.

Returned to Ireland on account of the financial crisis in this country, in 1935.

In 1936-37, in England, and completed the Heiser-Seadrome. This will enable Los Angeles to become the airport of the Pacific World, as it will be instrumental in allowing the China Clipper class of airships to fly the Pacific, and re-fuel half way across, thereby carrying a successful pay load.

Mr. Ted Zimmer, 8th Floor, Jewelry Trades Building, 220 W. 5th St., Los Angeles, was born in Colorado in 1904. His father and uncle have been in this country for over 40 years, the majority of that time they have been cutting gems in this State. Mr. Petrie, the uncle of Mr. Zimmer, died in 1935, and Mr. Ted Zimmer purchased his gem cutting business. Mr. Ted Zimmer has been in the gem cutting business for 19 years, practically all of his working life. He is well known in the trade, and he enjoys the confidence of the leading jewelers in the State. Mr. Zimmer has done a considerable amount of successful Turquoise mining, cutting and marketing of that gem, besides all other classes of gem cutting and dealing in this State, and is one of the leading expert cutters in the United States. His knowledge of crystallography is equal to anyone in the State.

Mr. Heiser gives as references the following:

J. W. Campbell, President of the Credit Clearance House Number 1 Vanderbilt Avenue, New York, N. Y.

Ira Clarke, Lieutenant Governor Federal Reserve Bank, San Francisco, Calif.

Georges Hollis, President Typographical Union, San Francisco, Calif.

Ralph Arnold, Geologist, 8th Floor Subway Terminal Bldg., Los Angeles, California.

L. J. Meyberg, Attorney, 403 Lane Mortgage Bldg., Los Angeles, California.

F. F. G. Hopper & Company, Custom Brokers, U. S. Customs, San Francisco, California.

Mr. Evans, Chief Appraiser, U. S. Gem Department, U. S. Customs, San Francisco, California.

Incidentally, the last two named gentlemen have handled and appraised Mr. Heiser's gems for approximately twenty years past.

Objectors' Exhibit SS.

Office of
Malcolm McEachin
Secretary of State

The State of Nevada
Department of State

I, Malcolm McEachin, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the annexed is a true, full and correct transcript of the original Articles of Incorporation of Golden State Gem Company of Nevada as the same appears on file and of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office in Carson City, Nevada, this 13th day of December, A. D. 1940.

MALCOLM McEACHIN,
Secretary of State.
(Seal) By MURIEL CULLIFIELD, Deputy.

Articles of Incorporation of Golden State Gem Company of Nevada.

Know All Men by These Presents: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under and by virtue of the General Corporation Law of the State of Nevada, and all acts amendatory thereof or additional thereto, and we hereby certify:

First: That the name of this corporation shall be Golden State Gem Company of Nevada.

Second: That the place where its principal office is to be located is in Carson Valley Bank Building, in the City of Carson City, County of Ormsby, State of Nevada, and the resident agent therein, and in charge thereof, is United States Corporation Company, but this corporation may maintain an office in such other place or places as may be from time to time fixed by its board of directors, or as may be fixed by the By-Laws of said corporation.

Third: That the objects and purposes for which said corporation is formed, and the nature of the business proposed to be transacted, promoted or carried on by said corporation are:

To search for, prospect and explore for precious and semi-precious stones, ores and minerals and to locate mining claims, grounds or lodes in the United States of America or the territories thereof or in foreign countries, and record the same pursuant to the mining laws of the said United States or other countries; to placer mine, bore, drill, prospect and mine for precious and semi-precious stones, gold, silver, copper, lead, zinc, iron, antimony, tin, asbestos, and all kinds of ores, metals, minerals, and precious and semi-precious stones, oils, gas and coal, and to mill, convert, prepare for market and otherwise produce and deal in the same and in the products and by-products thereof; to purchase or otherwise acquire, own, exchange, sell or otherwise dispose of, mortgage, hypothecate and deal in minerals and mineral lands of all kinds, oil, coal, and timber lands, personal estate, water and water rights, and to work, explore, operate and develop the same, and carry on the business of mining in all its branches; to carry on the business of searching for, prospecting, preparing, procuring, refining, piping, storing, transporting, supplying, buying, selling, manufacturing and distributing petroleum and other oils and their products or by-products; to construct, build, operate and maintain, oil wells, refineries, buildings, works, workshops, laboratories, machinery, power plants, saw mills, store and warehouses; to acquire by grant, purchase, or otherwise, any property or privileges from any government,

or from any authority, individual, municipal or otherwise, and to perform and fulfill the conditions thereof;

To construct, purchase or otherwise acquire, maintain, and operate pipe lines, tunnels, sluices, reservoirs, and ditches for mining, irrigation and transportation purposes. Also to purchase, lease, or otherwise acquire lands, mills, mill sites, tunnel sites, buildings, machinery, power houses, pumping plants, pump machinery, dump rights, ditch rights, flumes, pipes, pipe lines, private railways, private tramways, private roads, easements, franchises, and licenses. For its own use to purchase, construct, lease, or otherwise acquire, operate, and maintain electric lighting and power plants, buildings, machinery, appliances, and equipments appertaining thereto; to purchase, construct, lease, or otherwise acquire, operate, and maintain telegraph and telephone lines for the transmission of messages and sound by electricity; to furnish gas, water, electricity, power, heat, and light for mining, milling, agricultural, domestic, and other uses and purposes. To purchase, lease, or otherwise acquire, construct, and maintain plants for the purpose of extracting values from refractory ores. To purchase, treat, refine, extract, reduce, crush, calcine, smelt, concentrate, and manipulate all kinds of ores, minerals, and metalliferous substances with a view to obtaining therefrom gold, silver, tin, lead, copper, iron, and other metals, combination of metals, or other valuable substances with a view to preparing the same for market. Generally to engage in smelting, reducing, crushing, refining, milling, treating, assaying, and selling minerals and ores of all kinds, classes, and descriptions. To buy, sell, manufacture, and generally deal in machinery, blasting powder, and high explosives of every description, fuses, caps, implements, candles, and conveniences suitable for use in connection with mining and metallurgical operations. To purchase, lease, or otherwise acquire lands for the purpose of erecting thereon office buildings, plants, workshops, dwelling houses, warehouses, stores, hotels, and other buildings in connection with the foregoing purposes.

To hire, lease, purchase, locate, acquire, own, hold, exploit, develop, work, mine, sell, convey, let, mortgage, trans-

fer, or otherwise dispose of oil, coal and natural gas producing lands and mining properties, oil and natural gas wells, coal mines, mining claims, quarries, oil, gas and coal lands, and all kinds of real and personal property and all kinds of interests, easements, rights and privileges in connection therewith or appurtenant *there*-thereto and all kinds of rights and franchises, ditches, pipe lines, flumes, chutes, reservoirs, water works and electric plants.

To placer mine, mine, quarry and prepare for market precious and semi-precious and other stones and minerals and to manufacture the same into various products thereof and to transport and sell the same in crude and or in manufactured form and in connection therewith to generally carry on in all the respective branches thereof, the business of gem cutters, purveyors, manufacturers, merchants, distributors and or agents.

To carry on generally the business of jewelers, gold and silversmiths, dealers in precious stones, bullion, coins, medals, china, curiosities, gold and silver plate, plated articles, optical and scientific instruments of all kinds and all kinds and character of jewelry for personal wear or adornment and in connection therewith to acquire and dispose of in any lawful manner all such store buildings, structures of all kinds, machinery and equipment necessary or incidental thereto as may be deemed necessary.

To buy, sell, deal in, hold, or improve in any manner whatsoever, real estate and the fixtures and personal property incidental thereto or connected therewith; to purchase, lease, hold, manage, sell, mortgage, pledge and in any way acquire or dispose of real or personal property; and to carry on in all their respective branches the business of real estate dealers, builders, contractors, and dealers in building materials or requisites; and to do any and everything necessary or incidental to the accomplishment of any of these objects;

To manufacture, purchase, or otherwise acquire, sown, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with, goods, wares and merchandise and real and personal property of every class and description;

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation;

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation;

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership;

To issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise;

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly;

To have one or more offices, to carry on all or any of its operations and business and without restrictions or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and exercise all the powers conferred by the laws of Nevada upon corporations formed under the act hereinbefore referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Fourth. The total authorized capital stock of this corporation is Five Hundred Thousand (500,000) shares all of which shall be without nominal or par value. Of said capital stock One Hundred and Fifty Thousand (150,000) shares shall be preferred stock and Three Hundred and Fifty Thousand (350,000) shares shall be common stock.

The preferred stock shall entitle the holders thereof to receive from the surplus or net profits of the corporation, when and as declared by the Board of Directors, cumulative dividends at the rate of eighty cents (80c) per share per annum, payable on such dates during the months of January and July of each year after issuance as determined by the Board of Directors and before any dividends shall be paid or applied to the common stock.

In the event of the dissolution, liquidation or winding up of the corporation (whether voluntary or involuntary) the preferred stock shall entitle the holders thereof to receive the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon before any assets shall be applied to the common stock but shall not thereafter participate in the assets of the corporation.

The preferred stock shall be subject to redemption in whole or in part at any time after five (5) years from the date of issuance thereof until ten (10) years from the date of issuance thereof upon payment to the holders thereof of the sum of Ten Dollars and Fifty Cents ($10.50) per share together with all dividends accumulated and unpaid thereon.

After ten (10) years from the date of issue all preferred stock then issued and outstanding and unredeemed must be redeemed by the corporation by payment to the holders thereof of the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon. The directors shall have power to create and provide for such fund or funds as in their discretion shall be found necessary to provide for the redemption of the preferred stock as herein specified. The time and manner of redemption shall be as from time to time determined by the Board of Directors.

The preferred stock shall not be entitled to vote upon any questions affecting the management or affairs of the corporation nor shall the holders thereof be entitled to notice of stockholders' meetings except as otherwise provided by law, the exclusive voting right to be vested in the common stock; provided, however, that in the event the corporation shall fail to pay or declare dividends at the dividend rate upon the preferred stock and such delinquency shall continue for a period of eighteen (18) months, then and in that event, the preferred stock in respect to which such delinquency occurs shall be entitled to the same voting rights as attach to the common stock and shall also be entitled to notice of stockholders' meetings. Upon payment, however, to the preferred stock of all dividends accumulated and unpaid thereon, or the setting aside of the funds for the payment thereof, the voting rights of the preferred stock shall again cease and so on from time to time as such delinquencies may occur or be terminated.

Both preferred and common stock without nominal or par value may be issued by the corporation from time to time for such consideration as shall from time to time be determined by the Board of Directors.

Fifth: That the amount of capital with which this corporation will commence business is Five Hundred Dollars ($500.00).

That the names and addresses of each of the original subscribers to the capital stock and the amount subscribed for by each are as follows:

Names—Address	No. of Shares
Frank S. Cliff, Carson City, Nevada	3
F. E. Meder, Carson City, Nevada	1
L. H. Peters, Carson City, Nevada	1

Sixth: That the period of the existence of said corporation shall be unlimited.

Seventh: That the members of the governing board of said corporation shall be styled directors, and the number of said directors shall be seven (7).

The names and post office address of the first board of directors are as follows:

Names	Address
Wm. Muller	Carson City, Nevada
Henry P. Karge	Carson City, Nevada
Fred L. Kolster	Carson City, Nevada
Damon H. Carr	Carson City, Nevada
August A. Glanzman	Carson City, Nevada
H. C. Sproule	Carson City, Nevada
W. E. Baldy	Carson City, Nevada

Eighth: That the capital stock of the corporation shall not be subject to assessment.

That the private property of the stockholders, directors and officers shall not be subject to the payment of corporate debts to any extent whatever.

Ninth: In *futherance* and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the Company, except as may be otherwise specifically provided by the laws of the State of Nevada, within or without the State of Nevada, at such places as may be from time to time designated by them.

To determine from time to time whether, and if allowed, under what conditions and regulations the accounts and books of the company (other than the books required by law to be kept at the principal office of the corporation in

Nevada) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted or limited accordingly.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be reserved as working capital, to fix the times for the declaration and payment of dividends, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always that a majority of the whole board shall concur therein.

With the consent in writing or pursuant to the affirmative vote of the holders of at least sixty per cent (60%) of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always that a majority of the whole board concurs therein.

In order to promote the interests of the company and to encourage the utilization of the company's lands, and other property, to sell, assign, transfer, lease and in any lawful manner dispose of such portions of said property as the board of directors shall deem advisable, and to use and apply the funds *receive* in payment therefor to the surplus account for the benefit of the company, or the payment of dividends, or otherwise: provided, that a majority of the whole board concur therein, and further provided that the capital stock shall not be decreased except in accordance with the laws of Nevada.

By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall, for the time being, as provided in said resolution or in the by-laws, have and exercise any or all the powers of the Board of Directors which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

The company may use and apply its surplus earnings or

accumulated profits to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock from time to time to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired shall be regarded as profits for the purpose or declaration or payment of dividends, unless otherwise determined by a majority of the board of directors.

The corporation reserves the right to amend, alter or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

In Witness Whereof, we have hereunto set our hands and seals this 11th day of August, A.D. 1928.

Signed, sealed and executed in the presence of:

C. H. PETERS.
FRANK S. CLIFF L.S.
F. E. MEDER. L.S.
L. H. PETERS. L.S.

State of Nevada, County of Ormsby, ss.

Be It Remembered, that on this 11th day of August, A.D. 1928, personally appeared before me, a Notary Public in and for the said County and State, Frank S. Cliff, F. E. Meder and L. H. Peters, knows to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

C. H. PETERS,
Notary Public in and for
Ormsby County, Nevada.
(Seal)

Endorsed: Dated August 11th, 1928. Golden State Gem Company of Nevada, Articles of Incorporation.

Filed at the Request of United States Corporation Company August 11, 1928. W. G. Greathouse, Secretary of State. By John W. Brooks, Deputy Secretary of State.

Objector's Exhibit TT.

Paul Peek, Secretary of State.

State of California
(Seal)
Department of State

I, Paul Peek, Secretary of State of the State of California, do hereby certify:

That I have compared the annexed transcript with the record on file in my office, of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of the State of California this 28th day of December, 1940.

PAUL PEEK, Secretary of State.
(Seal) By CHAS. J. HAGERTY, Deputy.

Designation of Representative in the State of California Upon Whom Process Against Golden State Gem Company of Nevada, Incorporated Under the Laws of Nevada, May Be Served.

Know All Men By These Presents:

That Golden State Gem Company of Nevada, a corporation organized and existing under the laws of Nevada, has designated, constituted, and appointed, and by these presents does hereby designate, constitute, and appoint Alfred Barstow, residing in Los Angeles, State of California, its true and lawful attorney upon whom process issued by authority of or under any law of said State of California in any action or proceeding against it may be served; and service of such process on said representative shall constitute a valid and binding service on said corporation.

In Witness Whereof, said corporation has caused its

corporate name to be hereunto subscribed and its corporate seal to be affixed hereto this 25th. day of August, 1928

GOLDEN STATE GEM COMPANY OF NEVADA
(Name of corporation)
By WM. MUELLER, President.
By W. E. BALDY, Secretary.

Corporate Seal

[The Articles of Incorporation of Golden State Gem Company of Nevada, which form a part of this exhibit, appear as Exhibit SS in this record, page 1174.]

Objector's Exhibit UU.

List of Persons holding Shares in the Heiser Burmah Sapphires Limited on the 13th day of November, 1929 and of Persons who held shares therein at any time during the year immediately preceding Nov. 13, 1929 the said date, showing their Names Addresses and Occupations, and on account of the Shares so held.

Folio in Register Ledger containing particulars	Names, Addresses and Occupations				Number of shares held by existing members at date of Return	Account of Shares Particulars of Shares transferred during the preceeding year by persons who have ceased to be members		Remarks
	Surname	Christian Name	Address	Occupation		Number	Date of Registration of transfer	
53	Golden State Gem Co. of Nevada		Los Angeles U.S.A.	Gem Co.	Nil	10,000		Forfeited 5th Sept. 1929

Objectors' Exhibit VV.

Order Fixing Date for Hearing Objection to Claim of M. E. Heiser.

In the District Court of United States for Southern District of California, Central Division.

In Bankruptcy No. 13393-J.

In Matter of Golden State Gem Company, a corporation, Bankrupt.

Hubert F. Laugharn, Trustee herein, having filed his written objections to the claim of M. E. Heiser filed in the above entitled matter in the sum of $30,250.00,

It Is Ordered that April 14th, 1932, at the hour of 10 o'clock A. M. be and the same is hereby fixed for hearing said objections to the claim of M. E. Heiser.

Dated, April 1st, 1932.

EARL E. MOSS,
Referee in Bankruptcy.

Judgment of Dismissal.

In the District Court of the United States, Southern District of California, Central Division.

In the Matter of Golden State Gem Company, a corporation, Bankrupt.

No. 13393 J.

The Petition of M. E. Heiser, alleged creditor of the within estate, to review Referee's order disallowing his claim, heretofore filed herein, having come on for hearing before the Honorable William P. James at 10:00 o'clock A. M., May 16th, 1932, on notice to said alleged creditor, M. E. Heiser, through his attorney, Leonard J. Meyberg, by the Trustee herein, and it appearing to the Court that the order sought to be reviewed by said alleged creditor was made and entered by Referee in Bankruptcy Earl E. Moss, April 26th, 1932, and

It further appearing to the Court that said alleged creditor nor his attorney did not, as required by law and the rules of this Court, cause said Referee in Bankruptcy to certify to the Court a transcript of the proceedings so that the Court may make said review, it is therefore Ordered, Adjudged and Decreed that the petition of the said M. E. Heiser, alleged creditor, to review Referee's order be, and the same is hereby dismissed and the said order of the Referee Earl E. Moss sustaining Trustee's objections to the claim of the said M. E. Heiser be, and the same is hereby affirmed.

Dated this 18th day of May, 1932.

WM. P. JAMES,
U. S. District Court Judge.

Letter.

Law Offices
MacFarland, MacFarland and Beveridge
Suite 1025-26 Board of Trade Bldg.
111 West Seventh Street
Los Angeles, California.
Tucker 9910

February 19, 1930.

Hon. Earl E. Moss
Referee in Bankruptcy
Subway Terminal Bldg.
Los Angeles, Calif.

Re: Golden State Gem Co.

Dear Sir: Enclosing herein for filing proof of debt of M. E. Heiser against the above named bankrupt in the amount of $30,250.00.

Very truly yours,

MACFARLAND, MACFARLAND & BEVERIDGE,
By R. L. BEVERIDGE.

DB:NB. Encl.

Objectors' Exhibit WW.

Certificate in Re Claim of M. E. Heiser.

No. 13-393J.

In the United States District Court in and for the Southern District of California, Central Division.

In the Matter of Golden State Gem Co., Bankrupt.

I Hereby Certify that the records of the above entitled bankrupt proceedings are in the custody of the above entitled court and in my custody as Clerk thereof.

I Further Certify that I have examined carefully the original files of the said case and particularly for the purpose of locating the creditor's claim of M. E. Heiser filed in the above entitled proceedings as noted on the Referee's Docket of Claims in the sum of $30,250.00, and that I am unable to locate the said original claim of said M. E. Heiser in the files of the above entitled proceeding or otherwise or at all, and I am therefore unable to produce the same.

In Witness Whereof, I hereby affix my name and the Seal of the above entitled court.

EDMUND L. SMITH, Clerk,
By E. M. ENSTROMPE,
Deputy Clerk.

(Seal)

Dated at Los Angeles, California, this 10th day of July, 1942.

Objectors' Exhibit YY.

[For identification, not admitted.]

Complaint for Injunctive Relief and to Prevent Multiplicity of Suits.

In the District Court of the United States in and For the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al. Defendants.

To the Honorable Judges of the District Court of the United States In and For the Eastern District of Oklahoma:

Comes now M. E. Heiser, a judgment creditor of the bankrupt herein, Leonard J. Woodruff, and having on file herein a provable claim in the sum of $278,000, and respectfully shows to the court:

I.

That your petitioner is, and at all times herein mentioned was, and has been, a citizen of and a subject of the Kingdom of Great Britain, a resident of the City of London, Kingdom of Great Britain, and a non-citizen of the United States of Amerika; that the defendants Leonard J. Woodruff, Willie May Woodruff, Ida Belle Woodruff, Margueritte Woodruff, Howard Woodruff, and Leonard J. Woodruff, Jr., and each of them, are citizens of the United States of America, and each of them resides now in the State of Oklahoma and in the Eastern District of Oklahoma, at Ardmore, Oklahoma.

II.

That Leonard J. Woodruff was duly adjudicated a bankrupt within the meaning and purview of the National Bankruptcy Act of 1898 and the Amendments thereto by an order duly made by this court on the 5th day of July, 1939. That the administration of said bankruptcy proceedings was referred by an order of general reference made by this court on the 5th day of July, 1939, to the Honorable Geo. F. Clark, as Referee, and is now pending before said Referee, undetermined and unclosed. The said Honorable Geo. F. Clark was at all times herein mentioned, and now is, one of the Referees in Bankruptcy, duly appointed, qualified and act-

ing as such for the Eastern District of Oklahoma. That the amount involved in this instant case is in excess of $3,000.00 exclusive of interest.

III.

That Willie May Woodruff was at all times herein mentioned, and now is, the wife of the bankrupt Leonard J. Woodruff; that Ida Belle Woodruff was at all times herein mentioned, and now is, a single woman, a widow and the mother of said bankrupt; that Margueritte Woodruff, Leonard J. Woodruff, Jr., and Harold Woodruff, and each of them, were at all times herein mentioned, and now are, children of the bankrupt Leonard J. Woodruff; that said Willie May Woodruff, Ida Belle Woodruff, Margueritte Woodruff, Leonard J. Woodruff, Jr., and Harold Woodruff, and each of them, claim to be creditors with provable claims against the estate of the bankrupt Leonard J. Woodruff, and have filed within the time allowed by law, their respective alleged proofs of debt as such alleged creditors; that P. M. Jackson was on or about the 20th day of July, 1939, at a regularly called first meeting of creditors of the bankrupt herein, duly elected as Trustee in Bankruptcy of the Estate of the bankrupt Leonard J. Woodruff, immediately qualified as such and has been at all times since as such, and has been at all time since said date, and now is, the duly elected, qualified and acting Trustee in Bankruptcy of said estate of said bankrupt Leonard J. Woodruff; that at all times herein mentioned the United States District Court for the Southern District of California was one of the District Courts of the United States.

IV.

That heretofore and prior to the filing of the bankruptcy petition of Leonard J. Woodruff in this court on the 5th day of July, 1939, to wit, in the month of March, 1939, an action was pending in the District Court of the United States for the Southern District of California in which your petitioner, plaintiff herein, M. E. Heiser, was the plaintiff, and in which Leonard J. Woodruff, the bankrupt herein, was therein the defendant, said action being known in the files of the District Court of the United States for the Southern District of Cali-

fornia, as action No. 7256-C, entitled "M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al."; that in said action the defendant Leonard J. Woodruff was duly and regularly served with process, to wit, the summons and complaint, and thereafter upon evidence being submitted to the court in said District Court for the Southern District of California, duly made, gave and entered its judgment in favor of your petitioner herein, M. E. Heiser, and against the bankrupt herein, Leonard J. Woodruff; that said judgment was so made, given, rendered, and entered on the 20th day of March, 1939, and was for the principal sum of $164,000.00, together with interest and costs; that no part of said judgment, no part of the interest, and no part of the court costs has ever been paid and is now entirely unpaid, and said judgment is entirely unsatisfied and is an existing, valid, unpaid judgment; that at the time of the making, rendering, and entry of said judgment the said District Court for the Southern District of California had jurisdiction of the person of the defendant Leonard J. Woodruff and had jurisdiction of the subject matter of said action; that after being served with summons and complaint in the said last mentioned action the said Leonard J. Woodruff appeared in said action by counsel of his own selection, Ames Peterson and Edward Fitzpatrick, and appeared in open court personally and entered into a stipulation under the terms of which the court permitted evidence to be introduced on behalf of both the plaintiff M. E. Heiser and the defendant Leonard J. Woodruff, and the trial under said stipulation with respect to the value of certain precious and semi-precious stones, consisting of sapphires, opals and zircons, converted and taken by defendant Leonard J. Woodruff, involved in said action, occupied a period of approximately eight days; that evidence was introduced with respect to said values, both by the plaintiff M. E. Heiser and by the defendant Leonard J. Woodruff; that at or about the same time the said Leonard J. Woodruff appeared by counsel and moved to vacate and set aside the judgment hereinbefore referred to in said action, and the motion and application of said Leonard J. Woodruff was denied by an order of said District Court, duly made, given and entered; that after the hearing of the testimony respecting values, the court refused to change,

vacate or otherwise modify the judgment of March 20, 1939, which fixed the value of said gems as stated in said original judgment, to wit, $164,000.00; that the judgment of the District Court of the United States for the Southern District of California, in said action of Hesier vs. Woodruff, is a final judgment.

V.

That after the election and qualification of P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff in the Eastern District of Oklahoma, Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Marguerite Woodruff, and Harold Woodruff, together with numerous other persons, all claiming to be creditors of the bankrupt Woodruff, filed with the Honorable Geo. F. Clark, as Referee in Bankruptcy, their written application alleging that the judgment in favor of M. E. Heiser and against the bankrupt Leonard J. Woodruff, as aforesaid, was not a good and valid jugdment, and prayed the court, to wit, the said Honorable Referee in Bankruptcy Geo. F. Clark, to make his order permitting and instructing P. M. Jackson, the Trustee in Bankruptcy, to proceed to attack said judgment and to cause the same to be vacated, set aside, appealed from, and otherwise vacated and nullified; that the petition of said creditors is in the form, letters, words and figures as shown in the copy attached hereto, marked Exhibit 1 and made a part of this petition as though fully set forth herein, reference to which is hereby expressly made; that at the same time as the filing of said alleged creditors' petitions, as aforesaid, Exhibit 1, P. M. Jackson as Trustee filed with the said Honorable Geo. F. Clark, Referee herein, his petition asking leave to attack the said judgment in the said case of Heiser vs. Woodruff; that said petition was in the form, letters, words and figures as is shown in a copy thereto attached hereto, marked Exhibit 2, reference to which is expressly made as though fully set forth herein; that upon the presentation of such petitions the said Referee, Honorable Geo. F. Clark, made his order expressly instructing and authorizing and directing the Trustee in bankruptcy, P. M. Jackson, to employ counsel and to proceed to California and to attack, vacate, set aside, appeal from, and otherwise

seek to set aside the effect of the said judgment in the case of Heiser vs. Woodruff, No. 7256-C, as aforesaid; that said order of said Referee recited the proper place to attack said judgment was in the California courts. Copy of said order in the exact form, letters, words, and figures as made by said Referee, is attached hereto marked Exhibit 3, and special reference thereto is hereby made the same as though incorporated and set forth at length herein.

VI.

In accordance with, and pursuant to, the authority so vested in P. M. Jackson as Trustee in Bankruptcy herein by the order of said Referee Exhibit 3, the said P. M. Jackson employed competent counsel in California, to wit, Francis Cobb, the person referred to in the order of the Referee, and joining with the bankrupt Leonard J. Woodruff and his counsel, prepared pleadings of their own choosing and instituted proceedings in the District Court of the United States for the Southern District of California, seeking, first, to intervene in said proceedings in behalf of the Trustee P. M. Jackson; second, seeking to vacate and set aside the judgment of March 20, 1939; and third, instituting an independent equitable proceeding attacking said judgment for fraud in the procurement of said judgment, attacking said judgment for alleged insufficient service of process upon the bankrupt; on the ground that the complaint did not state a cause of action; on the ground that the allowance of interest in said judgment was not supported by the complaint and was contrary to law; on the ground that the complaint contains three separate counts and alleged that the judgment does not show upon which count the same is based; on the ground that the complaint is defective in that the causes of action are barred by the various statutes of limitations of the State of California; on the alleged ground that the complaint shows that the title of the merchandise alleged to have been converted passed to the Golden State Gem Company of Nevada; on the ground that the complaint does not show title in the plaintiff Heiser; on the ground that the complaint was barred by laches; on the ground that the bankrupt and P. M. Jackson as Trustee of the Estate of Leonard J. Woodruff, the bankrupt, have been prevented

from presenting defenses by reason of fraud, accident, surprise, and excusable neglect; upon the ground that the judgment was obtained by fraud. That the said District Court of the United States for the Southern District of California, after the submission of the proceedings so instituted by the bankrupt Woodruff and by P. M. Jackson, Trustee in Bankruptcy for the estate of Leonard J. Woodruff, upon the affidavits of P. M. Jackson, the bankrupt Leonard J. Woodruff, and others, and after said P. M. Jackson, Trustee, and Leonard J. Woodruff declined to offer any additional evidence, oral or documentary, in support of his proceedings and motions, duly made its order refusing to set aside and vacate the judgment in the said case of Heiser vs. Woodruff, No. 7256-C, and refused to grant any relief to either said P. M. Jackson as Trustee or the bankrupt Leonard J. Woodruff; that upon being advised of the unsuccessful result of said litigation so instituted by P. M. Jackson, Trustee, the said alleged creditors, Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Harold Woodruff, and Marguerite Woodruff, petitioned the said Honorable Geo. F. Clark, Referee in Bankruptcy in the Eastern District of Oklahoma, to authorize the expenditure of the funds of the estate of the bankrupt to permit a review thereof, to wit, a review of the orders and rulings and judgments of the said District Court for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit; thereupon the said Honorable Geo. F. Clark made his order permitting said review and permitting the expenditure of funds of the estate of the bankrupt by the Trustee P. M. Jackson for said purpose of appealing in said proceeding last above set forth, and P. M. Jackson drew the checks for the necessary funds for the printing of the transcript on appeal, the briefs before the Ninth Circuit Court, and payment of the other expenses necessary and incident to said appeal, which said checks were signed by said P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff and were counter-signed by the Honorable Geo. F. Clark as Referee in Bankruptcy, and which checks were drawn upon funds on deposit, to wit, assets of the estate of the bankrupt Leonard J. Woodruff.

VII.

That on appeal in the United States Circuit Court of Appeals for the Ninth Circuit the proceeding became and was known as "P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, Bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee," No. 9356; that said P. M. Jackson, Trustee, prosecuted said matter to a final decision in said Circuit Court and on the 30th day of April, 1940, said Circuit Court duly made, gave, rendered, and entered its decision in favor of M. E. Heiser, the appellee, and against P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard J. Woodruff, and against Leonard J. Woodruff, the bankrupt; that said decision expressly recited and determined that the proceeding by P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, was an independent equitable proceeding attacking the original judgment of Heiser, plaintiff, vs. Woodruff, defendant, as aforesaid, and affirmed the judgment, rulings, and orders of the District Court for the Southern District of California, which refused any relief to P. M. Jackson, Trustee, and Leonard J. Woodruff, the bankrupt, in respect to said judgment and in respect to their attacks upon it; that from said decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit, no appeal or review or petition for rehearing was filed, and the same became a final judgment and was on and prior to the first day of November, 1940, a final judgment. That the decision of said court is attached hereto, marked Exhibit 4.

VIII.

That within the time allowed by law, that is to say, within six months, immediately subsequent to the first meeting of creditors of the estate of the bankrupt Leonard J. Woodruff, and on the 20th day of July, 1939, M. E. Heiser filed with the Honorable Geo. F. Clark as Referee in Bankruptcy herein, in open court, a proof of claim; that said proof of claim was in the form as prescribed by the Supreme Court of the United States in its General Orders fixing the form of Proof of Debt that should be used by creditors in the filing of their claims with the Referee in Bankruptcy in bankruptcy cases; that said proof of debt was duly executed by

the judgment creditor M. E. Heiser, duly subscribed and sworn thereto before an official authorized to take oaths, and attached thereto the official certificate, seal and signature of such official, to wit, a Notary Public; that there was attached to said proof of debt an exemplified copy of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, No. 7256-C, in the District Court of the United States for the Southern District of California; that thereafter and after the decision in the case of P. M. Jackson, Trustee, Appellant, vs. M. E. Heiser, Appellee, No. 9356 in the United States Circuit Court of Appeals for the Ninth Circuit, was rendered, the said M. E. Heiser filed with the said Honorable Geo. F. Clark, a supplement to his proof of debt, which Supplement was in the form as prescribed by the Supreme Court of the United States in its General Orders requiring proof of debt in bankruptcy to be filed in a certain manner and form; that said supplement to said proof of debt of said M. E. Heiser was duly signed and sworn to in the manner provided by law and had attached thereto the seal, certificate, and signature of the person authorized to take oaths as required by law; that there was attached to such supplement to proof of debt a certified copy of the decision and decree of the United States Circuit Court of Appeals for the Ninth Circuit in proceedings No. 9356, P. M. Jackson, Trustee in Bankruptcy, et al., Appellants, vs. M. E. Heiser, Appellee.

IX.

That the bankrupt Leonard J. Woodruff, notwithstanding his previous unsuccessful two attempts to attack the validity and regularity of the judgment as rendered in the District Court of the United States for the Southern District of California, in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, and his unsuccessful attack against said judgment in the United States Circuit Court of Appeals for the Ninth Circuit, filed written objections to the allowance of the claim of M. E. Heiser and sought to attack said judgment upon the same identical grounds that he had previously twice attacked before the said District Court for the Southern District of California and before the United States Circuit Court of Appeals for the Ninth Circuit; that

alleged creditors, Willie May Woodruff, the wife of the bankrupt; Ida Bell Woodruff, the mother of the bankrupt; Margueritte Woodruff, the daughter of the bankrupt; Harold Woodruff, a son of the bankrupt; and Leonard J. Woodruff, Jr., a son of the bankrupt, each and all of them, filed with the Honorable Geo. F. Clark as Referee in Bankruptcy herein, their written objections seeking to attack the judgment in the case of Heiser vs. Woodruff upon the same identical grounds as has the Trustee in Bankruptcy herein, P. M. Jackson, attacked said judgment in the proceedings theretofore instituted by him, as hereinbefore set forth; that the said Referee in Bankruptcy, the Honorable Geo. F. Clark, set the objections of the bankrupt Leonard J. Woodruff, Willie May Woodruff, Ida Belle Woodruff, Harold Woodruff, Margueritte Woodruff, and Leonard J. Woodruff, Jr., for hearing for the 15th day of November, 1940, in the courtroom of the District Court in the Postoffice Building at Ardmore, Oklahoma; that at said time and at said place, M. E. Heiser appeared by his counsel, M. S. Meyberg, Rupert B. Turnbull, and T. G. Gibson, and offered in evidence, and there was received by the Court, the following documents as proof of said claim, each and all of which were duly exemplified by the certificates under the signature and seal of the respective custodians of the originals of said documents; that is to say, the Clerk of the United States District Court for the Southern District of California, and the certificate of the Judge of the District Court for the Southern District of California, said certificates being in the form prescribed by the rules and by law, and over the seal of the said District Court, to wit: The original claim of M. E. Heiser; the Supplement to the Claim of M. E. Heiser; the Complaint in the case of Heiser vs. Woodruff, and the Return of the United States Marshal for the Southern District of California, showing return of service thereon; the certificate and affidavit of service of summons and complaint as made by the United States Marshal for the Southern District of California, showing service of summons and complaint in the case of Heiser vs. Woodruff, upon the defendant Woodruff; the Default by Clerk; the Judgment of March 20, 1939, by the District Court after hearing of evidence; the Notice of Motion and Motion of

Leonard J. Woodruff to vacate and set aside the judgment of the District Court for the Southern District of California; the affidavits offered by and on behalf of Woodruff in respect to the Motion to Vacate the Judgment in the case of Heiser vs. Woodruff; the Order of the Court on the motion of Woodruff to vacate (June 8, 1939); the certified copy of the Minutes of the District Court of the United States for the Southern District of California showing the names of the witnesses sworn and the exhibits of documentary evidence of proof introduced; the Order of the Court after the hearing of the evidence pursuant to the stipulation of the parties; the Petition by Jackson as Trustee before the referee for an order authorizing Jackson to proceed in California to contest the judgment in the case of Heiser vs. Woodrufff; the Petition by all other creditors as filed before the Referee, Geo. F. Clark, in Oklahoma (including the said present objectors), praying for an order authorizing the Trustee Jackson to proceed to California and contest the judgment in the case of Heiser v. Woodruff; the order of the Referee, Geo. F. Clark, authorizing and instructing Jackson to contest the Heiser judgment in California, and authorizing the employment of counsel for that purpose; the Petition of Creditors praying the Referee, Geo. F. Clark, to authorize payment of costs on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the matter of Jackson, Trustee, vs. Heiser; Jackson's affidavits of merit; the Heiser answering affidavits of both Heiser and Leonard J. Meyberg; the Judgment of September 26, 1939, by the United States District Court for the Southern District of California; Notice of Appeal by P. M. Jackson, et al., to the Circuit Court of Appeals for the Ninth Circuit; the appellant's statement of points relied upon on said appeal; the certified copy of the Opinion and Decision of the United States Circuit Court of Appeals for the Ninth Circuit in Jackson vs. Heiser, No. 9356, the Mandate of the United States Circuit Court of Appeals in the case of Jackson vs. Heiser, No. 9356; the Order approving the bond of P. M. Jackson as Trustee;

That by said proof it was made to appear conclusively that the judgment, the basis of the claim of M. E. Heiser

herein, was a final judgment; that it was made to appear conclusively that said judgment had been attacked unsuccessfully by the bankrupt in proceedings instituted by him alone in the first instance; that it was made to appear conclusively that the same persons who are now objecting to said judgment as a conclusive judgment, had petitioned this court for an order requiring the Trustee herein, P. M. Jackson, to attack the Heiser judgment, and that the said P. M. Jackson had attacked said judgment for an alleged fraud in its procurement, and otherwise, and on the same grounds upon which objectors now seek to attack it; that it was made to appear conclusively that the said judgment of Heiser vs. Woodruff, aforesaid, was a final judgment and was not void upon its face, or at all; it was made to appear conclusively that the judgment in the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, vs. M. E. Heiser, was a final judgment and not void upon its face, or at all; it was made to appear conclusively by such proof that the objectors, Leonard J. Woodruff, the bankrupt, Willie May Woodruff, Ida Belle Woodruff, Harold Woodruff, Margueritte Woodruff, and Leonard Woodruff, Jr., and each of them, were in privity with the Trustee, P. M. Jackson, and P. M. Jackson acted in behalf of all creditors, including said objectors, in his attack upon the Heiser judgment, and that said objectors were bound by the result of the litigation so instituted and carried on by said P. M. Jackson, as Trustee, on their behalf; that it was made to appear conclusively that said objectors herein were estopped by said judgments, to wit, the final judgments in the case of Heiser vs. Woodruff, and in the case of Jackson as Trustee vs. Heiser; it was made to appear that the District Court for the Eastern District of Oklahoma was legally bound to give full faith and credit to the final judgments and decrees of the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of P. M. Jackson vs. Heiser, No. 9356, and was legally bound to give full faith and credit to the decree of the District Court of the United States for the Southern District of California, to wit, the final judgment in the case of Heiser vs. Woodruff, No. 7256-C.

X.

That upon making the proof, as aforesaid, the said M. E. Heiser rested and the objectors proceeded to attempt to offer evidence consisting in part of the same documentary proof which they had theretofore used upon the trial in the case of M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Defendant, in the said District Court of the United States for the Southern District of California, and in the matter of P. M. Jackson, Trustee, vs. Heiser, No. 9356, in the United States Circuit Court of Appeals for the Ninth Circuit, to wit, certified, photostatic copies of exhibits which had been offered and received in such proceedings; that to such offers of proof and to such attacks by the objectors against the validity of such judgments, M. E. Heiser made his objection that it was an attempt to re-try and to unsettle and to annul that which had been regularly settled and adjudicated by the said judgments, and was an attempt to re-litigate and re-adjudicate the matters and things that had been theretofore regularly litigated and regularly adjudicated and regularly determined, and which were final judgments; that the said M. E. Heiser objected that the objectors were bound by the decisions as against P. M. Jackson and against the bankrupt as they, the objectors, in their capacity of the alleged creditors of the bankrupt, were in privity with him, and that he, P. M. Jackson, as Trustee, had acted for and on behalf of said objectors; on the ground that the court could not permit a third attack upon said judgment as the matters and things decided by said judgments were res judicata; that the court could not permit the said objectors to be heard, as under the law they could not act in attacking the claim of a creditor where the Trustee had already attacked the judgment claim, and that to permit said further attacks constituted a multiplicity of suits; that the court overruled said objections of said M. E. Heiser and announced that he would permit the objectors to re-try all the matters and things involved in the case of M. E. Heiser vs. Leonard J. Woodruff, Defendant, as heretofore was pending and was decided in the District Court of the United States for the Southern District of California, and would permit the re-trial before him, the Honorable Geo. F. Clark, as Referee, of all the

matters relating to value of the gems, opals, zircons, sapphires, etc., as theretofore had been tried for a period of eight days before the District Court of the United States for the Southern District of California in said case of Heiser vs. Woodruff; that the said Referee did permit the retrying of the matters and things theretofore sought to be tried by P. M. Jackson as Trustee in Bankruptcy, in the matter of P. M. Jackson, Trustee, vs. M. E. Heiser, both in the District Court of the United States for the Southern District of California, and in the United States Circuit Court of Appeals for the Ninth Circuit, which trial commenced but was not completed.

XI.

That the objectors being unable at said time to produce all their alleged evidence in support of the merits of said actions last above named, requested and obtained a continuance of such trials on said objections to and until the 20th day of January, 1941; that the said Honorable Referee Clark has ordered the parties to return on the 20th day of January, 1941 to the courtroom on the second floor of the Federal Building, Ardmore, Oklahoma, and on said last mentioned date, and as stated, will permit the said objectors hereinbefore named, and each of them, including the bankrupt, to present evidence on the merits respecting the defenses which they may have on the merits, or otherwise, to off-set, overcome, and set aside the judgments in the said case of Heiser vs. Woodruff as rendered by the said District Court of the United States for the Southern District of California, hereinbefore set forth, and overcome the effect of the judgment as heretofore rendered in the United States Circuit Court of Appeals for the Ninth Circuit in the matter of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff vs. M. E. Heiser, No. 9356.

XII.

That unless restrained, the said objectors, with the permission of the said Honorable Referee Clark, will proceed at great length and at great expense to M. E. Heiser, to offer evidence, oral, documentary, and by deposition, attempting to re-litigate each, every, and all of the matters

and things now conclusively and finally determined in the said case of Jackson, Trustee, vs. Heiser, and in the case of Heiser vs. Woodruff, as aforesaid; that unless restrained said objectors, said Referee, and said bankrupt, will attempt to compel and will compel, your petitioner M. E. Heiser, now at San Francisco, California, to cause his attorneys, who are residents of the County of Los Angeles, California, to journey approximately 1700 miles from their homes and offices to Ardmore, Oklahoma, to remain there over a period of weeks to produce witnesses, all of whom reside, other than M. E. Heiser, in the State of California; to pay the traveling expenses of such witnesses from California to Ardmore, Oklahoma, and return; to pay the maintenance of such witnesses and attorneys while enroute from California to Ardmore and return; to pay the maintenance of such witnesses and attorneys while in Ardmore; to expend large sums in the payment of expert witnesses' fees to gem experts to be called as witnesses on behalf of M. E. Heiser; to pay out fees for the taking of depositions; to pay out fees to court reporters and stenographers; to obtain great quantities of and pay for certified copies of records; to pay the fees of the officials certifying such records; to pay the costs of court reporters in the preparation of transcripts; to pay the costs on review and on appeal; will compel M. E. Heiser to submit to a multiplicity of suits to therein re-litigate what has already been litigated, what has already been adjudicated, what has already been settled in favor of M. E. Heiser by the previous final existing decrees of the United States Circuit Court of Appeals for the Ninth Circuit in Jackson vs. Heiser, and in the final judgment of the District Court for the Southern District of California in the matter of Heiser vs. Woodruff, and your petitioner alleges that if the said objectors are permitted to unlawfully and illegally re-try such matters the same will impede your petitioner in the proper administration of the allowance of his claim; that the said objections are vexing and harassing, and unfounded in law or in fact; that the said objectors will continue to subject your petitioner to unnecessary defenses of the same matters heretofore litigated, heretofore adjudicated, and heretofore settled; that said unnecessary proceedings will necessitate the expenditure of thousands of

dollars on the part of M. E. Heiser; that by the acts, conduct, and proceedings of the said objectors your petitioner is being deprived of the legal benefit, the practical benefit, and the value of the final decrees now in favor of your petitioner M. E. Heiser and against the bankrupt Leonard J. Woodruff, and against P. M. Jackson as Trustee in Bankruptcy of the estate of Leonard J. Woodruff, which are binding upon them and each of them, and which are binding upon persons in privity with them, to wit, the said objectors. That said objections were filed by defendants and are being prosecuted solely for the purpose of vexing, harassing and delaying the plaintiff in the collection of his judgment claim, and to force plaintiff to compromise and partially release his claim, by reason of the prohibitive cost of defending himself from said attacks.

XIII.

Your petitioner alleges that they do not deny the right of the Referee in Bankruptcy to determine the legal validity only of the said judgments hereinbefore referred to, but that your petitioner denies the legal right of the objectors to re-try and re-litigate the subject matter of the judgments hereinbefore referred to. Petitioner alleges that he has no plain, adequate or speedy remedy at law, as more fully appears by the facts hereinbefore and in this petition alleged. Your petitioner alleges that the objectors are, and should be, estopped to present their objections and that the objectors should not be permitted to re-try and re-litigate the matters and things heretofore litigated and finally determined on the following grounds:

1. For the reason that the said objectors and the said Referee are bound to give full faith and credit to the final judgment and the final decree of the United States Circuit Court of Appeals for the Ninth Circuit in the matter of P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, vs. M. E. Heiser, No. 9356, and are compelled to give full faith and credit to the final judgment and decree of the United States District Court for the Southern District of California in the matter of M. E. Heiser vs. Leonard Woodruff.

2. On the ground that the objectors and each of them are estopped by the judgments aforesaid, and described in No. 1 above, from further attacking said judgments, on the ground that the same attacks were made on the same grounds by their Trustee in Bankruptcy, P. M. Jackson.

3. On the ground that to permit the retrial on the merits of the litigation described in No. 1 above, is to create a multiplicity of suits in an attempt to re-determine and re-litigate the matters and things now finally determined and decided.

4. On the ground that the Honorable Referee in Bankruptcy under the law may inquire only into the validity of the said judgments described in No. 1 above, and it appearing that said judgments are not void upon their face, and it appearing that said judgments have been heretofore attacked for alleged fraud in their procurement, the Referee cannot permit the re-trying of said matters which are now final.

XIV.

Petitioner alleges that the objectors have threatened, and are threatening, that even though they be unsuccessful by a decision of the Referee on the merits, they will further attempt to re-litigate the matter by prosecuting reviews and appeals. Your petitioner alleges that such acts upon the part of the objectors will cause further embarrassment, expense, hinderance, and delay of the petitioner, and will subject him to additional extremely expensive and unnecessary multiplicity of suits, all with respect to the same subject matter which has heretofore been litigated and finally determined.

Wherefore, your petitioner, having no adequate, plain or speedy remedy at law, prays this court that it may issue forthwith, without notice, a preliminary injunction,

1. Restraining the objectors, Leonard J. Woodruff, the bankrupt; Willie May Woodruff, the wife of the bankrupt; Ida Belle Woodruff, the mother of the bankrupt; Margueritte Woodruff, the daughter of the bankrupt; Howard Woodruff and Leonard Woodruff, Jr., sons of the bankrupt, from proceeding further, or at all, in their objections to the merits

of the matters and things determined in the case of Heiser vs. Woodruff, as shown by the final judgment in that case as rendered by the District Court of the United States for the Southern District of California, and as determined and shown by the final judgment of the United States Circuit Court of Appeals for the Ninth Circuit in the case of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff vs. M. E. Heiser, No. 9356.

2. That the court fix a return day and issue its order to show cause requiring the appearance and attendance of the said objectors before this court, at a time and place to be fixed by this court, and requiring said respondents to show cause why this court should not make its permanent order restraining and enjoining said objectors and said Referee, and each of them, from further embarrassing, hindering, delaying and impeding the administration of this estate by restraining each and all of said respondents from re-trying, re-litigating, and re-adjudicating the matters and things which have already been litigated, adjudicated, and settled, which are in favor of M. E. Heiser, the petitioner, as a judgment creditor in the said cases of Heiser vs. Woodruff, and P. M. Jackson, Trustee, vs. Heiser.

3. For such other and further relief, both in law and equity, as will do complete justice in respect to the parties.

4. For his costs herein expended and incurred.

LEONARD J. MEYBERG,
M. S. MEYBERG,
RUPERT B. TURNBULL,
Attorneys for Plaintiff.

M. E. HEISER, Plaintiff.

Filed December 30, 1940. W. V. McClure, Clerk, U. S. District Court.

[Verified.]

[Exhibit 1, application of creditors for order directing trustee to attack judgment, case No. 7623, United States

District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the application which appears at page 20.]

[Exhibit 2, application of trustee for authority to employ counsel, etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the application which appears at page 21.]

[Exhibit 3, order authorizing and directing trustee to institute legal action etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the order which appears at page 28.]

[Exhibit 4, Opinion, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with Heiser exhibit V, which appears at page 291.]

Affidavit of Leonard J. Meyberg in Support of Plaintiff's Application for Temporary Restraining Order.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al, Defendants.

United States of America, State of California, County of Los Angeles, ss.

LEONARD J. MEYBERG, being first duly sworn, deposes and says:

That he is one of the attorneys of record for M. E. Heiser

in the action in the District Court of the United States for the Southern District of California, M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, and he is also one of the attorneys of record in the case of P. M. Jackson, trustee in bankruptcy of the Estate of Leonard J. Woodruff, bankrupt, and Leonard J. Woodruff vs. M. E. Heiser, No. 9401 in the United States Circuit Court of Appeals for the Ninth Circuit; that your affiant is one of the attorneys who actually produced the evidence, examined the witnesses before the District Court of the United States for the Southern District of California in the said case of M. E. Heiser vs. Leonard Woodruff, defendant, and that as such he is familiar with the evidence which was adduced, and which will be required to be presented before the Honorable Geo. F. Clark as Referee in Bankruptcy in the event M. E. Heiser is compelled to retry and relitigate upon the merits each, every and all of the things which have been adjudicated in the two first above causes and by the first two above named courts.

That trial of the matters and things involved in said case would in affiant's opinion require the production, among other things, of the following testimony for the following reasons:

First: the said action was one based upon the conversion by Leonard Woodruff of raw sapphires, zircons and opals consisting of both gem stock and industrial stock; that the value of said property so converted by Leonard Woodruff was as fixed by the trial court to wit: the said United States District Court for the Southern District of California in its judgment after hearing evidence submitted by plaintiff and defendant Woodruff as the sum of $164,000.00; that it will be necessary in any hearing on the merits before the Referee for said M. E. Heiser to obtain the evidence and produce first, evidence of bank officers of the former United States National Bank of Los Angeles to show the conditions under which M. E. Heiser deposited said gems and gem stock with and in the custody of said bank; to show the conditions under which, and the circumstances under which, Leonard J. Woodruff acquired possession thereof, and converted the same; that it would require the production in person before

the said Referee in Bankruptcy in Ardmore, Oklahoma, of numerous gem experts to wit: persons trained and skilled and of long experience in the mining, handling and marketing of precious and semi-precious stones of the type and kind involved which were, and are, sapphires rough cut, opals and zircons rough cut, and jade; that it would require the production of experts trained and skilled in the mining, cutting and the use and marketing of commercial or industrial sapphires of the type of which a portion here involved are, and such as are used in the making of bearings for railroad engines and other machinery; that it would require the production of expert witnesses to establish first, the quality of the said material, dividing the same into semi-precious gem stock, jewelry stock and industrial or commercial stock, the qualifications of such expert witnesses also as to, and their testimony concerning the value at the then market at Los Angeles, California, where the gems were converted by Woodruff. It would require the employment of such experts, the transportation of them from Los Angeles, California, to Ardmore, Oklahoma, a round-trip of approximately 3500 miles, and the payment of the fees of such witnesses, the payment of their maintenance while enroute to and from Ardmore, and during their stay at Ardmore as witnesses; that the trial at Ardmore or elsewhere in the State of Oklahoma of said matters upon their merits would require the production of other witnesses corroborating the documentary proof concerning the acts and conduct of Leonard J. Woodruff with respect to the conversion of the said property; would require either the production of witnesses or the taking of the depositions of officials of Los Angeles County, California, to wit: deputy sheriffs and deputy sheriff keepers with respect to their acts and conduct in causing the sale to be had of the gems and gem stock purportedly in pursuance of writ of execution obtained by Leonard J. Woodruff in an action heretofore pending in the Superior Court for the State of California in and for the County of Los Angeles, in which the said Leonard J. Woodruff was then plaintiff and in which Golden State Gem Company of Nevada and others, but not M. E. Heiser, were defendants; that the proof on behalf of M. E. Heiser on a re-trial would require the production of exemplified copies of records of

the said Superior Court of the State of California in and for the County of Los Angeles, of the records of the District Court of the United States or the Southern District of California, of the records of the United States Circuit Court of Appeals for the Ninth Circuit; would require the production of witnesses to identify originals of certain documents; that said expense of the aforesaid witnesses and documents would be exorbitantly excessive practically, would run into thousands of dollars, and said M. E. Heiser would be unable to recover most of such expenditures as a greater portion thereof would be non-taxable costs. That the costs taxed and allowed to plaintiff M. E. Heiser by the United States District Court in the said matter of Heiser vs. Woodruff, 7256-C, are $1595.0[illegible]nd have not been paid.

That the costs of producing expert testimony at the eight day hearing before the said court, the cost of attorney fees and producing other witnesses and evidence before said court is not included in said costs.

That all of the matters and things sought to be re-tried before the Honorable Geo. F. Clark, Referee in Bankruptcy at Ardmore, Oklahoma, are matters which are finally settled and decided under the final decrees and final judgments in the said proceedings of P. M. Jackson, trustee in bankruptcy of the Estate of Leonard Woodruff, bankrupt, and Leonard Woodruff vs. M. E. Heiser, No. 9356, in the United States Circuit Court of Appeals for the Ninth Circuit, and which were finally decided by the final judgment of the United States District Court of the Southern District of California in the action entitled M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant; that the said objectors herein, Willie Mae Woodruff, Ida Belle Woodruff, Leonard Woodruff, Leonard Woodruff, Jr., Howard Woodruff and Marguerite Woodruff, and each of them, have had their day in court and have had litigated on their behalf the matters and things they now seek to re-litigate; that the action of the said objectors in now again objecting constitutes an actual harassment and vexation and an actual expense of enormous proportions and of many thousands of dollars to the said plaintiff M. E. Heiser, and constitutes an unnecessary delay in the payment of the judgment of

M. E. Heiser, and payment of dividends thereon out of the Estate of Leonard J. Woodruff, bankrupt.

LEONARD J. MEYBERG.

Subscribed and sworn to before me this 18th day of December, 1940. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Separate Answer of the Defendant Leonard J. Woodruff.

Filed January 30, 1941. W. V. McLure, Clerk U. S. District Court.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al., Defendants. No. 426 Civil.

To the Honorable Judge of the District Court of the United States in and for the Eastern District of Oklahoma:

Comes now the defendant Leonard J. Woodruff and for his separate answer herein, states to the Court:

I.

Plaintiff's complaint is insufficient and this action should be dismissed for the following reasons:

(a) Plaintiff seeks to enjoin the trial of a matter pending before Honorable Geo. F. Clark, Referee in Bankruptcy of and for this Court, without making said Referee a party hereto and said Referee is a necessary party to this action;

(b) Plaintiff seeks to enjoin the trial of a matter pending before Honorable Geo. F. Clark, Referee in Bankruptcy, which matter was referred to said Referee for hearing by this Court and said Bankruptcy Court, being a part of this Court, plaintiff thereby seeks to have this Court enjoin itself from proceeding in a cause and matter which it is required to adjudicate and determine under the laws of the United States of America applicable thereto:

(c) The allegations of plaintiff's complaint are insufficient in law, even if true, to entitle plaintiff to the relief prayed for;

(d) The allegations of plaintiff's complaint do not constitute a cause of action in favor of plaintiff and against this defendant;

(e) It is the duty of the Bankrupt Court to inquire into plaintiff's claim and into the judgment underlying it;

(f) Plaintiff's complaint shows upon its face that he is now estopped by his own conduct to complain of and about the proceedings had and being had before the Referee in Bankruptcy.

II.

Answering the first numbered paragraph of plaintiff's complaint defendant says he is without information sufficient to affirm or deny the allegations thereof with respect to the citizenship of the plaintiff. In connection therewith defendant says that he has information to the effect and believes that plaintiff has lived and engaged in business in the United States of America for the greater part of the past twenty-five years. Defendant admits the allegations of residence of himself and his co-defendants.

III.

Defendant admits the allegations of the second numbered paragraph of plaintiff's complaint and in addition thereto shows to the Court that on the 26th day of August, 19[illegible] upon application duly made and after the filing of a petition for arrangement under Chapter XI of the Bankruptcy Act of 1938, and after due notice having been given thereof and of the hearing thereon, the Honorable Geo. F. Clark, as sitting Referee in Bankruptcy, entered an order in said cause staying the administration of said matter in bankruptcy and permitting the filing of objections to claims by this defendant and others, a copy of said order being hereto attached, marked Exhibit "A," and made a part hereof. No appeal was taken from said order and the same has become final and said matter is now pending before said Referee in Bankruptcy upon the petition of this defendant for an

rangement under said Chapter XI of said Bankruptcy Act and under said order of August 26, 1940. Fifty-four secured and unsecured claims have been filed in said proceeding by creditors claiming a total of $995,982.62.

IV.

Defendant admits the allegations of the third numbered paragraph of plaintiff's complaint and in addition thereto alleges and says that the plaintiff herein concurred in the election of said P. M. Jackson as Trustee and voted for the said P. M. Jackson to be such trustee.

V.

Answering the fourth numbered paragraph of plaintiff's complaint, defendant admits that judgment by default was rendered against him by the District Court of the United States in and for the Southern District of California, on the 20th day of March, 1939 in a case in which the plaintiff herein, M. E. Heiser, was plaintiff and this defendant and others were defendants, said judgment being for the sum of $[illegible] principal, plus $113,036.71 interest, and $[illegible] costs; admits that said judgment is unpaid, but denies that same is a valid judgment; denies that the District Court for the Southern District of California had jurisdiction over this defendant at the time of its rendition; admits that this defendant employed Ames Peterson and Edward Fitzpatrick as his attorneys in an endeavor to secure an order vacating said judgment and permitting this defendant a trial upon the merits of plaintiff's action; alleges that said attorneys entered a special appearance for this defendant in said action and alleges that all matters and things thereafter occurring in said case on behalf of this defendant were under said special appearance; alleges that defendant's motion to vacate said judgment was filed [illegible] after the rendition thereof and notwithstanding prompt appearance and the use of diligence on the part of this defendant the District Court of the United States for the Southern District of California refused to vacate and set aside said judgment and refused to give this defendant a trial upon the merits of said action. A copy of said motion [illegible] being hereto attached, marked Exhibit "B" and made a part hereof.

Defendant admits that a stipulation was entered into under which the California Court heard evidence as to the value of the property which the plaintiff claimed this defendant converted but in this connection defendant shows to the Court that the allegations of plaintiff's complaint in the case in the California Court in which the plaintiff alleged that this defendant had converted certain property from him, were untrue in that the plaintiff did not at any time own or have the possession and control of the property which he alleged was converted and was never possessed of the same or similar property of a value which in any wise approximated the principal amount of the judgment. The evidence as to value was based upon and the proceedings were had upon the false premise that the plaintiff owned said property and that the defendant had converted the same from him, when as a matter of fact, plaintiff never owned and never had the possession of the same and defendant never at any time converted the same of and from the plaintiff.

Upon information and belief defendant denies that said hearing lasted eight days and alleges the facts to be that said hearing occupied only a part of each of five days and that the total time consumed in the hearing did not exceed two days of eight hours each.

Defendant admits that the District Court of the United States for the Southern District of California after hearing evidence, which evidence was based upon the false premises aforesaid, refused to change the amount of the judgment but alleges in this connection by its act in so doing said court deprived this defendant of property without due process of law and without giving him his day in court. In this connection defendant says that he verily believes that if said court had heard evidence upon the merits of said controversy no judgment would have been rendered against him in said matter and the plaintiff would not have had a judgment against him, and this defendant pleads and prays for an opportunity to present to a court of *judtice* the facts in this case and states to this Court that he verily believes that if this Court or any court of competent jurisdiction will hear the facts with respect to the matters and things alleged in

plaintiff's complaint in the California case in which he obtained his judgment, defendant is confident that said judgment will be vacated, set aside and held for naught.

VI.

Answering the fifth numbered paragraph of plaintiff's complaint, defendant alleges upon information and belief that the matters and things therein set forth are substantially true.

VII.

Answering the sixth numbered paragraph of plaintiff's complaint, this defendant admits upon information and belief that the Trustee in Bankruptcy, P. M. Jackson, employed Francis Cobb to represent him in an endeavor to secure a hearing upon the *meirts* of the controversy between this defendant and the plaintiff in the California Court, and admits that a proceeding by motion was instituted in the District Court of the United States for the Southern District of California in which the Trustee sought permission to intervene in said action and be permitted to defend the same upon its merits; alleges that said proceeding was a summary proceeding by motion; alleges upon information and belief that the application of the Trustee for permission to intervene and for permission to defend upon the merits of the controversy as set out in plaintiff's complaint was denied by the District Court of the United States for the Southern District of California without a full inquiry into same and without allowing and giving said Trustee his day in Court. Defendant says that the hearing upon said motion constituted no more than a formal application to the court for permission to file appropriate pleadings setting up the matters and things which said Trustee believed to be material in behalf of the creditors of the estate of which he was Trustee and in support of his right to intervene in said action and to contest the same upon its merits. Upon the presentation of said motion for permission to intervene by the Trustee no evidence was heard or taken by the court and the merits of the controversy was in no wise inquired into and the motion of the Trustee was denied by the Court without hearing any evidence and without any inquiry into the

merits of the controversy and without the Trustee having been given an opportunity to present to the Court the merits of the controversy in a proper manner and without due and proper consideration being given to the motion of said Trustee for permission so to do.

This defendant admits upon information and belief that an appeal was prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the District Court of the United States for the Southern District of California denying the motion of the Trustee for permission to intervene and be heard upon the merits of the matters and things set out in the plaintiff's complaint in said action and that the expense of said appeal was borne by the estate in bankruptcy.

VIII.

For answer to the seventh numbered paragraph of plaintiff's complaint, defendant admits that the order of the District Court of the United States in and for the Southern District of California was affirmed by the Circuit Court of Appeals for the Ninth Circuit and that a copy of the decision of said Court is attached to plaintiff's complaint herein and identified as Exhibit "4."

IX.

Answering the eighth numbered paragraph of plaintiff's complaint, defendant upon information and belief admits that the allegations therein contained are substantially true.

X.

Answering the ninth paragraph of plaintiff's complaint, defendant admits that he filed objections to the allowance of the claim of M. E. Heiser and alleges that the same was done as a matter of right and under and by virtue of the provisions of the order of August 26, 1940, copy of which is attached hereto as Exhibit "A," and defendant admits upon information and belief that his co-defendants herein likewise filed objections to the claim of the plaintiff herein; defendant admits that said objections came on for hearing before the Honorable Geo. F. Clark, Referee in Bankruptcy, in the court room at Ardmore on the 15th day of November,

1940, and that the plaintiff appeared by his counsel, M. S. Meyberg, Rupert B. Turnbull and T. G. Gibson. In this connection the defendant says that said objections were originally set for hearing on the 15th day of October, 1940, and said hearing was continued by the Referee until the 28th day of October, 1940, and was further continued at the request of the plaintiff herein until the 15th day of November, 1940. A copy of defendant's objections, together with the exhibits thereto attached is hereto attached, marked Exhibit "C" and made a part hereof.

The defendant admits that evidence was offered by the plaintiff in support of his claim and that the evidence offered was substantially as set out in the ninth numbered paragraph of his complaint. In this connection defendant says that the plaintiff did not offer the judgment roll in said matter, nor did he offer in support of his claim all of the minutes and orders of the United States District Court for the Southern District of California in said matter.

Defendant denies that by the proof offered it was made to appear that the judgment was final or that it had been unsuccessfully attacked by this defendant or by the Trustee, either upon the same grounds now urged by this defendant in his objections to said claim before the Referee in Bankruptcy or upon other grounds; denies that it was made to appear that said judgment was a final judgment, or that the opinion of the United States Circuit Court of Appeals for the Ninth Circuit, attached to plaintiff's complaint as Exhibit "4" was a final judgment upon the merits of the controversy. Defendant denied that said judgment is a final judgment before the Referee in Bankruptcy; denies that any proceedings had in the United States District Court for the Southern District of California or in the Circuit Court of Appeals for the Ninth Circuit, constitutes either a bar or an estoppel to the attack which is being made upon said judgment before the Referee in Bankruptcy or the right of the Bankruptcy Court to inquire into the merits of the judgment underlying plaintiff's claim.

XI.

Answering the tenth numbered paragraph of plaintiff's complaint defendant admits the Referee in Bankruptcy

overruled the objections of the plaintiff to the introduction of evidence by this defendant and the other objectors in support of their objections to the claim of the plaintiff herein; denies that the action of said Referee in so doing will permit a retrial of all the matters and things involved in the case of M. E. Heiser vs. Leonard J. Woodruff; alleges that the matters and things therein involved with respect to the merits of said controversy have never been tried or litigated. Defendant specifically denies that the action of said Referee will permit the retrying of matters and things heretofore sought to be tried in the proceedings instituted by the Trustee in the case of Heiser vs. Woodruff in the United States District Court for the Southern District of California and by the decision of the United States Circuit Court of Appeals for the Ninth Circuit and in connection therewith defendant says that said matters were never tried or *litigation,* either upon the application of this defendant or upon the motion of said Trustee in either of said California courts; that no evidence was heard upon the motion of the Trustee for permission to intervene and be heard and no evidence was heard by either of said courts upon the merits of said controversy or upon the truth and falsity of the substantial and material allegations of the complaint filed by the plaintiff in said action and upon which he obtained his judgment by default and defendant says that none of the orders, decrees or judgments entered in said matters in the California Courts constitutes either a bar or an estoppel to the proceedings before the Referee in Bankruptcy.

XII.

By way of affirmative defense defendant says that the plaintiff is now estopped to question the jurisdiction or the right of the Referee in Bankruptcy to proceed with said hearing or the right of this defendant to prosecute and to be heard upon his objections to plaintiff's claim for the following reasons:

(A) Plaintiff did not appeal from the order of August 26, 1940, attached hereto as Exhibit "A", but permitted the same to become final.

(B) After the Referee had continued the hearing on

said objections from the 14th day of October, 1940 to the 28th day of October, 1940, the plaintiff made application to the Referee for a further continuance until November 15, 1940, which continuance was granted the plaintiff.

(C) The plaintiff filed responses to the objections to his claim filed by this defendant's co-defendants.

(D) The plaintiff did not file a response to the objections to his claim filed by this defendant.

(E) The plaintiff appeared by his attorneys before the Referee at Ardmore on November 15, 1940 and participated in the hearing of the objections to his claim and in the hearing of his objections to other claims filed in said matter, which hearing continued until the afternoon of November 27, 1940, at which time said hearing was by agreement continued by the Referee until January 20, 1941, for two reasons, first, because the Referee could not continue with said hearing at said time, and secondly, because the objectors to the claim of the plaintiff desired more time in which to procure evidence to present to the Referee in support of their objections. At the time of said recess the objectors to the plaintiff's claim had upon the witness stand one Walter Calvin Smith; the direct examination of said Walter Calvin Smith had not been completed at the time of the recess and the plaintiff demanded that the Court require the objectors to return said Smith to the witness stand when the hearing was resumed on January 20, 1941, so that the plaintiff could cross-examine him and at the insistence of plaintiff the Referee ordered said witness to return at said time and ordered the objectors to have said witness present in court at said time. The plaintiff participated in the examination of said witness by objections to questions asked and to documentary evidence offered during the examination of said witness.

(F) The parties hereto stipulated in writing to the taking of depositions to be used upon the hearing of said objections, copy of which stipulation is attached, marked Exhibit "D", and made a part hereof. The plaintiff proceeded to exercise the privileges granted by said stipulation and did exercise them.

(G) The parties hereto again stipulated to the taking of depositions after the adjournment of the hearing on November 27, 1940, said stipulation being by wire and copies of said telegraphic communications being attached as Exhibits "E" and "F".

(H) The plaintiff submitted all of the matters and things set out in his complaint to the Referee in Bankruptcy for decision and the Referee passed thereon and decided the issues raised adversely to the plaintiff. Plaintiff submitted said controversy to the Referee without objection on his part to the jurisdiction of the Referee to pass thereon. Plaintiff has a right of appeal from the decision of the Referee adverse to him.

XIII.

For another and further defense and with respect to the matters and things set up in paragraphs numbered X, XI and XII of this answer, defendant says that by filing his responses to the objections to his claim filed by this defendant's co-defendants, in which responses defendant says that plaintiff urged substantially the same matters and things which he pleads in the first nine numbered paragraphs of his complaint herein, and by appearing before the Referee in Bankruptcy and submitting said matters to said Referee in Bankruptcy for decision, the plaintiff elected his forum and his procedure for the assertion and litigation of all the matters and things herein complained of and is bound by such election. Defendant says that plaintiff, after an adverse decision can not now rescind said election of remedies and of the forum for the assertion and litigation of his rights but is bound thereby.

XIV.

Answering the eleventh numbered paragraph of plaintiff's complaint, defendant admits that a continuance was requested by the objectors to the claim of the plaintiff herein; that no objections were made to said continuance by the plaintiff and that by agreement of the plaintiff and this defendant and with the approval of the Referee, said hearing was continued until the 20th day of January, 1941

XV.

Answering the twelfth numbered paragraph of plaintiff's complaint, this defendant denies that the plaintiff will be put to great expense in contesting the hearing before the Referee in Bankruptcy for the reason that plaintiff stated in open court before the Referee in Bankruptcy that he would not introduce any evidence in opposition to the evidence of the objectors to the claim of said M. E. Heiser, and the attorneys for the plaintiff have since stated that the plaintiff herein would have no evidence to introduce on the hearing before the Referee in Bankruptcy on the objections to the claim of M. E. Heiser, even though this Court should deny the plaintiff's prayer for an injunction herein.

Defendant denies that the objections filed by him to the claim of the plaintiff herein were without merit; denies that they were made for the purpose of vexing and harassing the plaintiff; denies that same will result in a multiplicity of law suits.

XVI.

In answer to the thirteenth numbered paragraph of plaintiff's complaint, defendant says that the plaintiff has a plain, speedy and adequate remedy at law by appeal; denies that the judgment underlying the plaintiff's claim is entitled to full faith and credit; denies that this defendant is estopped or barred from attacking said judgment; denies that to permit a trial of the matter on its merits will create a multiplicity of suits or redetermine and relitigate matters which have been determined and litigated.

In this connection defendant says that the Bankruptcy Court has full power and authority and it is its duty to inquire into the merits of the controversy upon which the judgment underlying plaintiff's claim is based and to determine whether or not same was obtained without fraud and collusion and that the same rests upon a real debt. And in this connection, defendant alleges, upon information and belief, that he will be able to prove by competent evidence that said judgment was and is not founded upon a real debt; that the plaintiff never had a good and valid claim

of action against this defendant; that this defendant was not indebted to the plaintiff in any sum at the time of the rendition of said default judgment; that said judgment was obtained by false testimony given by the plaintiff; that the allegations of plaintiff's complaint with respect to the ownership of the property therein set out are untrue and that the plaintiff was not possessed of the property therein described and of the value therein alleged and this defendant did not convert of and from the plaintiff the property therein described and set out or any property whatever.

XVII.

Defendant denies that his acts will cause unnecessary embarrassment, expense, hinderance and delay to the plaintiff and denies that his acts will cause the plaintiff multiplicity of suits but alleges the facts to be that this defendant is only endeavoring to secure his day in court, to which he is entitled and which he has never had, and alleges that if he is allowed his day in court and if permitted to disclose to the Bankruptcy Court the true facts with respect to the judgment underlying plaintiff's claim that this defendant believes in good faith that said claim will be disallowed by the Referee in Bankruptcy in accordance with the prayer of his objections to said claim.

In this connection defendant shows to the Court that the Golden States Gem Company of California was adjudged a bankrupt by the United States District Court in and for the Southern District of California sometime in the fall of 1929 and that in the month of February, 1930 plaintiff herein filed or caused to be filed in his behalf a claim in said bankruptcy *procedings* for the sum of $30,250.00, $30,000.00 of which amount represented a claim on the part of the plaintiff for the same property which the plaintiff in his subsequent suit against this defendant alleged was worth $164,000.00, and for which he obtained a default judgment in such amount, and defendant alleges upon information and belief that upon a trial of the merits of the judgment underlying the claim of the plaintiff in bankruptcy, he will be able to show by competent proof that the plaintiff under oath valued said property at amounts varying from $30,000.00 to $190,000.00, and defendant says

upon information and belief that if the claim of the plaintiff is allowed in said proceedings for an arrangement it will be allowed for a much less sum than that represented by the judgment underlying the claim for the reasons, as above stated, that defendant believes and alleges upon information and belief that plaintiff was not possessed of the property which he claims to have owned in his complaint in the case in which the judgment was rendered and if he was possessed of said property at said time or any part thereof, it was of much less value than that represented by the default judgment.

XVII.

For further answer and by way of further defense this answering defendant shows to the Court that under Rule No. 15 (B and C) of Civil Procedure of this Court, which rules apply in the trial of objections to the claim of plaintiff before the Referee in Bankruptcy, this defendant has a right amend his objections to the claim of the plaintiff herein upon the trial of said objections or at the conclusion of the trial thereof, and in the event that the objections heretofore filed by this defendant to the claim of the plaintiff are found to be insufficient in law and there is proof adduced at the trial substantiating a legal and equitable attack upon and objections to said claim, that this defendant has the right under said rules to amend his objections to conform to said proof and will exercise said right.

Wherefore, having fully answered, defendant prays that the temporary injunction heretofore granted herein be dissolved; that plaintiff's prayer for a permanent injunction be denied; that he have such other relief to which he may show himself entitled.

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Ardmore, Oklahoma

.....

Ardmore, Oklahoma
Attorneys for Defendant
Leonard J. Woodruff

[Exhibit A, order staying bankruptcy proceedings, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt, is identical with the order which appears at page 29.]

[Exhibit B, motion of Leonard Woodruff to set aside default and default judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the motion which appears at page 220.]

[Exhibit C, objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser, is identical with the objections which appear at page 77.]

[Exhibit A to Exhibit C, judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the judgment which appears at page 10.]

[Exhibit B to Exhibit C, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the complaint which appears at page 45.]

[Exhibit C to Exhibit C, order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the order which appears at page 70.]

[Exhibit D to Exhibit C, default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al., is identical with the default judgment which appears at page 73.]

[Exhibit E to Exhibit C, certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co., is identical with the certificate which appears at page 69.

Exhibit D.

In the District Court of the United States Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. No. 7623 In Bankruptcy.

Stipulation in Re the Taking of Depositions of Witnesses: Waiver of the Application for, Notice of, and Issuance of a Commission to Take Testimony.

It Is Hereby Stipulated by and between the undersigned party, *Marc* Feiler, representing various claimants, Hiram E. Casey, representing the bankrupt Woodruff, and Leonard J. Meyberg and Rupert B. Turnbull, representing the objecting creditor, M. E. Heiser, that the depositions may be taken of the following witnesses: of such witnesses as may be produced at 400 Lane Mortgage Building, Eighth and Spring Streets, Los Angeles, California, on the dates as hereinafter and in the manner designated and continuing from day to day as necessary until completed.

Notice in writing shall be given by the party desiring to produce witnesses, giving the date and the hour when said witnesses will be produced, and said notice will be served at least two days previous to the date the depositions are to be taken. Said notice shall state the name of the witness to be taken at the time fixed in the notice.

The parties hereto agree that all applications for the issuance of commission to take such testimony of such witnesses, the issuance of a commission, and all other and further notice of the time and place of the taking of said depositions be and hereby is waived.

The witnesses whose testimony is to be taken shall be such witnesses as are produced on behalf of the parties to this stipulation. The testimony of such witnesses when reduced to writing, signed, and returned into Court by the Notary before whom they are taken, may be used by either party or any party with the same full force and legal effect as if said witnesses were personally present and testifying herein.

All legal objections to the testimony may be reserved to

be made at the time of the use of such testimony except as objections to the form of the questions or the form of the answers, which objections shall be made at the time the testimony is taken and noted in the record, otherwise shall be deemed to be waived.

Dated: Oct. 1st 1940.

RUPERT B. TURNBULL,
400 Title Insurance Bldg.,
Los Angeles.
HIRAM E. CASEY,
Rowan Bldg., Los Angeles.
MARK S. FEILER,
1474 Glenville Drive;
Los Angeles.

Exhibit E.

Class of Service Desired
Night Letter x

Copy of Western Union Telegram.

Ardmore Okla December 5 1940

Honorable Rupert B Turnbull Attorney at Law 400 Title Insurance Building Los Angeles California

In the event we desire to take depositions in California within next two or three weeks will you waive formal notice securing of commissions and all formalities and agree to taking of depositions upon written stipulations setting forth time and place and names of witnesses. Will appreciate this courtesy upon the part of yourself and Mr. Meyberg. Please answer by wire our expense.

Regards
CHAMPION & FISCHL
W W POTTER

Paid Chg Louis A Fischl

Exhibit F.

Western Union

1940 Dec 6 PM 5 00

KMAE 97 / 6 Collect—Los Angeles Calif 6 219P
Champion and Fischl—Attorneys
Send Stipulation Make It Mutual—

TURNBULL

Jan. 28, 1941

Received copy of written answer.

T. G. Gibson Atty. for Pltf.

[Temporary Injunction.]

In the District Court of the United States for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Leonard J. Woodruff, Jr., John Doe, First Company, a corporation, Mary Black, Second Company, a corporation, Defendants. No. 426.

The verified complaint and petition of M. E. Heiser, the plaintiff herein, having been filed and application having been made by plaintiff for a restraining order and Preliminary Injunction and the court having on December 30th, 1940 fixed January 4th, 1941 at 9:00 a. m. as the time for the hearing of said application and notice in writing of the time and place of hearing having been given defendants on December 30, 1940 as shown by the notice and returns of service thereof on file, and the court having determined said notice sufficient, and the matter having come on for hearing at Muskogee, Oklahoma at the time and place fixed, T. G. Gibson, Esq., and Rupert B. Turnbull, Esq., appearing as attorneys on behalf of plaintiff and Thomas Champion, Esq., attorney appearing on behalf of defendant Leonard J. Woodruff, Sr., and W. W. Potter, Esq., attorney appearing on behalf of defendants Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret

Woodruff, Leonard J. Woodruff, Jr., and plaintiff having heretofore served and filed in support of his application, in addition to his complaint, the affidavits of Leonard V. Meyberg, M. E. Heiser, and Rupert B. Turnbull with their respective exhibits, and plaintiff's memorandum of points and authorities; and good cause appearing therefrom, and

It Is Ordered, that the defendants, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Leonard J. Woodruff, Jr., and each of them, be and are restrained and enjoined until further order of this court from further prosecuting or prosecuting at all their respective objections to the allowance of the claim of M. E. Heiser as a judgment creditor of Leonard J. Woodruff, bankrupt, No. 7623, now pending before the Hon. George F. Clark, as Referee in Bankruptcy of this court, to-wit:

From prosecuting the objections of the defendants herein and each of their said objections, and each of them, are restrained and enjoined until further order of this court, from re-litigating the matters and things involved and set forth in said objections insofar as said matters have been determined, decided and settled by the final judgments and decrees of:

First: The decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, bankrupt, and Leonard J. Woodruff, bankrupt, vs. M. E. Heiser, No. 9356.

Second: The final decision as rendered and entered in the District Court of the United States for the Southern District of California, in that action and proceeding entitled "M. E. Heiser, plaintiff, vs. Leonard J. Woodruff et al., defendants", No. 7256-C.

It Is Further Ordered, that until further order of this court, that the said defendants, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Jr., and Leonard J. Woodruff, Jr.,

and each of them are restrained and enjoined from proceeding in any manner at all to litigate by the prosecution of their present objections or any similar objections to the claim of M. E. Heiser as a judgment creditor of the estate of Leonard J. Woodruff, bankrupt, No. 7623, which bankruptcy proceeding, and which said claim of M. E. Heiser, and which objections are now pending before the Hon. George F. Clark, as Referee in Bankruptcy, one of the referees of this court for the Eastern District of Oklahoma.

This temporary restraining order is issued for the reason that it has been made to appear to this court by the verified complaint of the plaintiff on file herein, and the affidavits on file herein made in support of his application for temporary restraining order, and by reason of the documents attached to the plaintiff's complaint that plaintiff is entitled to his peace from vexatious harrassing and unnecessary litigation with respect to matters and things which have heretofore been settled and adjudicated by decision of the United States Circuit Court of Appeals for the Ninth Circuit in the case of P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard J. Woodruff, and Leonard J. Woodruff vs. M. E. Heiser, and also which have been decided by the final judgment entered by the District Court of the United States for the Southern District of California in an action entitled "M. E. Heiser, plaintiff vs. Leonard J. Woodruff, et al., defendants", and that irreparable damage and injury will follow and is threatened unless the defendants and each of them, be so restrained and enjoined, for the reason that if the acts complained of by the plaintiff are done and performed by the defendants, plaintiff will lose, and there will be forever lost to him the injunctive relief to which he claims he is entitled in his complaint.

The Court has required, and the plaintiff has furnished and filed a bond as security for the payment of such costs or damages as may be incurred or suffered by any party who is found to have been unlawfully enjoined or restrained by this Order. Said bond is in the sum of $2500.00 and has been approved by this Court.

Dated at Muskogee, Oklahoma, this 6th day of January, 1941.

EUGENE RICE, U. S. District Judge.

Approved As To Form:
CHAMPION AND FISCHL, Attorneys for Leonard J. Woodruff.
W. W. POTTER, Attorney for Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Margaret Woodruff, Howard Woodruff.

Filed Jan. 6, 1941. W. V. McClure, Clerk, U. S. District Court.

Findings of Fact and Conclusions of Law.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants. No. 426—Civil.

On December 30, 1940, the plaintiff, M. E. Heiser, a non-resident of the State of Oklahoma, filed his complaint seeking injunctive relief against the defendants. The defendant, Leonard J. Woodruff, Jr., is a bankrupt, having been adjudicated a bankrupt in July, 1939. The other defendants named in this action are creditors of the bankrupt, Leonard J. Woodruff; at least they assert claims against the bankrupt estate. The plaintiff, Heiser, is the owner of a judgment obtained in the United States District Court for the Southern District of California wherein Heiser was plaintiff and Woodruff was defendant. The principal sum of the judgment is One Hundred Sixty Four Thousand ($164,000) Dollars, and said judgment with interest and costs amounts to Two Hundred Seventy Eight Thousand ($278,000) Dollars at the time of the institution of this action. The judgment which Heiser holds against Woodruff has become final. Prior to the filing of bankruptcy the defendant endeavored to have the same set aside upon his application filed in the United States District Court of California. He was unsuccessful and no appeal was taken. After the bankruptcy proceedings were begun in this court, the Trustee in Bankruptcy

went to California and endeavored to have this judgment set aside. He, too, was unsuccessful.

An appeal was taken to the Circuit Court of Appeals of the Ninth Circuit and by its decision, the Circuit Court of Appeals affirmed the District Court. After the judgment became final Heiser filed his claim in the bankruptcy court making claim for the sum of Two Hundred Seventy Eight Thousand ($278,000) Dollars, said claim being based upon said judgment. In the hearing before the Referee upon said claim the bankrupt and the other general creditors filed written objections to the allowance of the claim, and upon the hearing sought to introduce evidence attacking the validity of the judgment, and, as plaintiff alleges, attempted to relitigate the questions that he says were finally settled and adjudicated in the United States District Court for the Southern District of California. The Referee in Bankruptcy after hearing arguments finally concluded that the bankrupt and general creditors had a right to introduce this evidence, and that he had a right to inquire into said judgment. In order that the bankrupt and creditors might procure certain needed evidence, a continuance was granted to the twentieth day of January, 1941. It was prior to this date that the plaintiff filed his complaint seeking to enjoin the defendants in this case from proceeding further with their efforts before the Referee in Bankruptcy. Upon notice to the defendants, a hearing upon the granting of a temporary injunction was set for January 4, 1941. On said date plaintiff appeared by his attorney and the defendants appeared by their attorneys. As a result of this hearing the court on January 4 granted the plaintiff a temporary injunction conditioned upon the giving of a bond in the sum of Two Thousand Five Hundred ($2,500) Dollars with sureties to be approved by the court. The order of the court granting the temporary injunction contains this language in regard to a bond, "The court has required and the plaintiff has furnished and filed a bond as security for the payment of such costs or damages as may be incurred or suffered by any party who is found to be unlawfully injured or restrained by this order. Said bond is in the sum of $2,500 and has been approved by this court." The bond was approved and

the order was signed on the sixth day of January, 1941. Said cause was thereafter set for trial and a hearing upon the merits, evidence was introduced, the cause was argued to the court, and briefs submitted. Upon the trial of this cause upon its merits the defendants contended that if permitted to introduce evidence in the bankrupt court they could successfully show that the bankrupt was never indebted to the plaintiff in any sum whatever, that the judgment of the California court is void, that it was procured upon prejured testimony, that the bankrupt, Woodruff, had never been permitted to defend said cause upon the merits and that the claim should either be disallowed in whole or greatly reduced in amount.

Upon consideration of the law, this court came to the conclusion that the plaintiff herein had an adequate remedy at law, that is, by proceeding in bankruptcy and appealing or bringing the matter before the court by a bill of review from the action of the Referee in Bankruptcy; that this involved no more expense or litigation than the method pursued by this plaintiff in this injunction suit; that the action of the plaintiff herein in reality was an attempt to have a court of equity control the procedure of the bankruptcy court, and that a court of equity has no such power or jurisdiction, and this court denied injunctive relief to the plaintiff, dissolved the temporary injunction, and directed that the matter proceed in its orderly way in a bankrupt court, specifically reserving a decision upon the right of the bankrupt and the creditors to question in the bankruptcy court the validity of the judgment relied upon as a basis of the claim by the plaintiff. This judgment was accepted by the plaintiff. No appeal has been taken therefrom. The defendants by motion have asked the court to assess the daniages, and at the date set for this trial, to wit: August 18, 1941, the plaintiff appeared by his counsel, the surety on his bond, the United States Fidelity and Guaranty Company appeared by its counsel, and the defendants appeared by their counsel.

The bond that was executed by the plaintiff and filed and approved herein was the form of bond that is used and required to be filed under the state law in the District Courts in the State of Oklahoma. It contains the following pro-

vision. "Now, therefore, we, M. E. Heiser, as principal, and United States Fidelity & Guaranty Company, as surety, hereby undertake in the sum of Two Thousand Five Hundred ($2,500) Dollars that the plaintiff shall pay to the said defendant or to the party injured any damages he may sustain including reasonable attorney fees by reason of issue of said injunction if it should be finally decided that the said injunction ought not to have been granted."

The defendants are residents of the State of Oklahoma. The evidence which they desire to introduce in the hearing before the Referee in Bankruptcy pertaining to the judgment mentioned herein must in the main be secured in California. At the time the hearing for a temporary injunction was had herein the attorney for the defendants, who himself resides at Ardmore, Oklahoma, was in California for the purpose of taking the depositions desired for the hearing before the Referee in Bankruptcy. Preparations for the taking of such depositions had practically been completed. The granting of the temporary injunction herein caused the attorney for the defendants to abandon the taking of the depositions in California at that time whereupon he returned to the State of Oklahoma. At the time of the granting of the temporary injunction herein one of the chief considerations in determining the amount of the bond that should be required was the fact that the granting of the temporary injunction would stop the taking of said depositions and in the event that the temporary injunction should later be dissolved the defendants would be put to the expense of financing the taking of the depositions in California and that it would be necessary for their attorney to return to California for this purpose. A consideration of a reasonable attorneys fee for the defense of the injunction action was not considered by the court at that time, in fact the court's order did not require that the bond contain such a provision as that.

The evidence introduced at this present hearing is to the effect that the defendants have agreed to pay the attorney for his return to California to complete the taking of the depositions that would have been taken in January of this year but for the granting of the temporary injunction, the

sum of One Thousand ($1,000) Dollars in addition to the fee and expenses provided for the taking of the depositions upon the former trip. Evidence further discloses that the defendants have employed an attorney in San Francisco and paid him the sum of Five Hundred ($500) Dollars for the taking of depositions of witnesses in San Francisco. The attorney for the defendants has advanced for them the sum of Eighteen and 42/100 ($18.42) Dollars for the taking of depositions used upon the trial of this cause upon its merits. The evidence which was introduced upon this hearing and which is not contradicted is to the effect that this One Thousand ($1,000) Dollars and the Five Hundred ($500) Dollar items is an additional expense to which the defendants have been put by reason of the granting of the temporary injunction herein. It was for the purpose of protecting the defendants against this added expense that the bond in this case was required.

Conclusions of Law.

I.

Under the law of the State of Oklahoma one of the conditions of an injunction bond is for the payment of reasonable attorneys fees, §718 Oklahoma Statutes 1931, 12 O. S. A. §1392. Such a requirement is not contained in Rule 65C Federal Rules of Civil Procedure nor in the Act of Congress 28 U. S. C. A. 382. The fact that the plaintiff used the form of bond required under the state law and that it contains a provision for the payment of attorneys fees will not serve to enlarge the obligation of the plaintiffs beyond that required under the Federal law and the recital in said bond in regard to the payment of an attorneys fees may be treated as surplusage, 32 Corpus Juris, paragraph 525, page 318.

II.

The liability of the plaintiff and his surety on the bond given herein is controlled by Federal law and not by the laws of the State of Oklahoma, and under the Federal law attorneys fees for the defense of the injunction suit are not an item of damage covered by the bond required under the Federal law. Duke Power Co., et al. vs. Greenwood

County et al., 25 F. Supp. 419, Greenwood County et al. vs. Duke Power Co. et al., 107 F. (2) 484; Salvage Process Corp. et al. vs. Acme Tank Cleaning Corp., 104 F. (2) 105; Tullock vs. Mulvane, 184 U. S. 497.

III.

The court concludes that the defendants have been damaged as follows: One Thousand ($1,000) Dollars, the sum for which they have become legally liable to their attorneys for returning to California to complete the taking of depositions interrupted by the granting of the temporary injunction herein; Five Hundred ($500) Dollars, the amount paid the attorney in San Francisco for the taking of depositions; Eighteen and 42/100 ($18.42) Dollars, cost of depositions taken to be used on the trial of the injunction suit upon its merits; a total of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars.

IV.

The Defendants are entitled to a judgment on the application filed herein against the plaintiff and the surety on his bond, The United States Fidelity & Guaranty Company, and each of them for the sum of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars.

On the trial of this application and at the conclusion of the evidence the attorneys for the respective parties agreed that the court might upon filing his findings of fact and conclusions of law enter judgment without further notice to either of the parties. And in accordance therewith judgment is entered this day in favor of the defendants and against the plaintiff, M. E. Heiser, and United States Fidelity & Guaranty Co., and each of them in the sum of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars and the costs of this action.

Dated this twentieth day of August, 1941.

EUGENE RICE, District Judge.

Judgment.

United States District Court for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants. No. 426 Civil.

Filed Aug. 20, 1941. John H. Pugh, Clerk, U. S. District Court. By Tom McSpadden, Deputy Clerk.

On the 18th day of August, 1941, this matter came on for hearing at Muskogee, upon proper notice to all parties upon the application of the defendants on order of the court assessing the damages sustained by the defendants under the injunction bond, and for judgment against the sureties therefor; plaintiff appeared by his attorney of record, Rupert B. Turnbull, the defendants, Willie Mae Woodruff and Howard Woodruff, appeared in person and by their attorney, W. W. Potter, and the defendant, Leonard J. Woodruff, appeared by his attorney, Louis A. Fischl, and the court having heard the evidence and argument of counsel, and being fully advised in the premises, on this the 20th day of August, 1941, makes findings of fact herein, which findings of fact are made a part of this judgment, and in accordance therewith

It Is Ordered, Adjudged, and Decreed by the court that the defendants have and recover judgment on the injunction bond herein against the plaintiff, M. E. Heiser, and the surety, United States Fidelity & Guaranty Company, in the sum of $1518.42, together with interest thereon at the rate of 6% per annum from the date of the entry of this judgment.

Eugene Rice, Judge.

United States of America, Eastern District of Oklahoma, ss.

I, John H. Pugh, Clerk of the United States District Court in and for the Eastern District of Oklahoma, do hereby certify that the annexed and foregoing is a true and full copy of the original Complaint for *Injuctive* Relief and to prevent Multiplicity of Suits, Temporary Injunction, Separate Answer of the Defendant Leonard J.

Woodruff, and Findings of Fact and Conclusions of Law—Case No. 426—Civil—M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Muskogee, Oklahoma this 20th day of July, A. D. 1942.

JOHN H. PUGH, Clerk.
(Seal) By MARY KNIERIM, Deputy Clerk.

Certificate.

United States of America, Eastern District of Oklahoma, ss.

601 I, John H. Pugh, Clerk of the United States District Court in and for the Eastern District of Oklahoma, do hereby certify that the annexed and foregoing is a true and correct copy of the original pleadings and proceedings in Bankruptcy No. 7623; In the Matter of Leonard J. Woodruff, Bankrupt, as is called for in the designations of the contents of the record filed herein, and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Muskogee, Oklahoma; this 1st day of September, 1944.

JOHN H. PUGH, Clerk, U. S. District Court.
By RANDOLPH KIZZIRE, Deputy Clerk.
(Seal)

Filed September 5, 1944. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

First Day, May Term, Monday, May 14th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

These causes came on to be heard, Rupert B. Turnbull, Esquire; and Leonard J. Meyberg, Esquire, appearing for M. E. Heiser, appellant in case No. 3043 and appellee in cases Nos. 3052 and 3053; H. A. Ledbetter, Esquire, appearing for appellees in case No. 3043 and appellant in case No. 3053; Louis A. Fischl, Esquire, and Thomas W. Champion, Esquire, appearing for appellants in case No. 3052.

On motion, appellants in case No. 3052 were granted leave to file twenty printed copies of additional authorities instanter, which was accordingly done.

On motion, M. E. Heiser was granted leave to file four typewritten copies of a supplemental brief within ten days from this day.

Thereupon, these causes were argued by counsel and were submitted to the court.

Opinion.

[August 11, 1945.]

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before Phillips, Bratton and Huxman, Circuit Judges.

Bratton, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for

Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant Woodruff failed to answer or otherwise plead in the case; plaintiff submitted evidence; and on March 20, 1939, the court entered judgment against such defendant for $164,000, together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court, for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors, filed objections to the claim of Heiser; and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal steps as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit Woodruff to answer, and permit the trustee to intervene. The court denied the motion, Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The

referee later heard evidence and disallowed the claim in toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted *res judicata* of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U.S.C.A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act; and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state, its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, or the subordination of claims to other claims. Pepper v. Litton, 308 U.S. 295; Prudence Realization Corp. v. Geist, 316 U.S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an alleged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from a simple contract debt, or an unliquidated claim, into a judgment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection. Pepper v. Litton, supra. And in the absence of a well grounded plea of *res judicata*, the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real debt of the bankrupt. Pepper v. Litton, supra.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Woodruff expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him constitutes *res judicata* here to that extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, supra.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Woodruff to vacate the judgment, by the motion of the trustee and the defendant Woodruff to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, supra. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, supra, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in

the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions, in accordance with Rule of Civil Procedure 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310; Kelley v. Everglades Drainage District, 319 U.S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

Huxman, Circuit Judge, Dissenting:

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is res judicata.

It is of course well-settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment, but when

the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels, and, by the use of perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment, and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on July 20,

1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud. . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original judgment by the use of false and fraudulent testimony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious, false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to in-

troduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. 2d 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal. Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is res judicata not only as to those matters which were decided, but also as to those matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U.S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

Judgment.

Fiftieth Day, May Term, Saturday, August 11th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Esatern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the provision in the judgment of the said district court in this cause allowing the claim of Heiser be and the same is hereby vacated; that this cause be and the same is hereby remanded for further action in conformity with the majority opinion of this court; and that Willie Mae Woodruff, Howard L. Woodruff, Margueritte Woodruff, Leonard Woodruff, Jr., Ida Belle Woodruff, and Leonard J. Woodruff, appellants, have and recover of and from M. E. Heiser, appellee, their costs herein and have execution therefor.

Petition for Rehearing.

TOPICAL INDEX

PAGE

I.

The alleged frauds and the judicial determinations thereof 1

II.

Intrinsic and extrinsic fraud 11

Only where the fraud alleged was extrinsic or collateral to the matter which was tried and determined by a court in his judgment or decree can be used to collaterally attack it. intrinsic fraud is insufficient to warrant setting aside the judgment or orders under attack 11

The findings of the referee 26

III.

The Ninth Circuit unanimously held that Jackson, Trustee, and Woodruff versus Heiser was an independent equitable action attacking the Heiser judgment for fraud 33

Conclusion 36

Certificate of counsel 40

Opinion of the United States Circuit Court of Appeals for the Tenth Circuit ..... App. p. 1

TABLE OF AUTHORITIES CITED

CASES.	PAGE
American SS Nav. Co., In re, 14 Fed. Sup. 106	23
Beneficial Loan Co. v. Noble, 125 Fed. (2d) 425, Subdiv. 6	24
Brown v. Buena Vista, 95 U. S. 157	21
Crim v. Handley, 94 U. S. 652	21
Chicot Co. Dist. v. Bank, 308 U. S. 371	24, 34
Clinto v. Mille[illegible]96 Okla. 71, citing R. C. L.	20
Cooper v. Rauch, 80 Fed. (2d) 1005	23
Cromwell v. County of Sac., 94 U. S. 351	24
Eisenmayer v. Thompson, 186 Cal. 538, 199 Pac. 798	13
El Reno etc v. Sutton, 41 Okla. 297	20, 22
Fayerweather v. Ritch, 195 U. S. 276, 49 L. Ed. 193	21
Flood v. Templeton, 152 Cal. 148, at p. 155, 92 Pac. 78, 81, 13 L. R. A. N. S. 1579	19
Grubb v. Public Utility, 281 U. S. 470, 478, 479	21
Hammell v. Britton, 19 Cal. (2d) at p. 72	13, 14
Hanley case, 114 Cal. 690	11
Harvey v. Griffith, 133 Cal. App. 17	11
Horton v. Horton, 18 Cal. (2d) 584	11, 12, 13
Kiely v. McGlynn, 21 Wall. (U. S. 503, 22 L. Ed. 599)	20
LaSalle v. Peterson, 220 Cal. 739, 32 Pac. (2d) 612	13
Leavenworth v. Chicago Co., 134 U. S. 688	21
Marine Ins. v. Hodgson, 3 L. Ed. 362	21
Moffett v. Robbins, 81 Fed. (2d) 431	34
Moffett v. United States, 112 U. S. 24, 28 L. Ed. 623	22
Nelson v. Meehan, 155 Fed. (1d) 12	22
New York L. Ins. Co. v. Bangs, 103 U. S. 780	21
Nickols v. Stephens, 157 U. S. 370, 39 L. Ed. 736	22
Paramount Public Corp., Re, 85 Fed. (2d) 42	22
Pepper v. Litton, 308 U. S. 295	17, 23

PAGE

Pickford v. Talbot, 225 U. S. 651 21

Pico v. Cohn, 91 Cal. 129, 133, 25 Pac. 970, 27 Pac. 537, Am. St. Rep. 159, 13 L. R. A. 336 ..... 13, 22

Prudence Corp. v. Geist, 316 U. S. 89, at p. 95 17

Rogers v. Mulkey, 63 Cal. App. (2d) 575 ..... 14, 15

Rust v. United Water Works Co., 70 Fed. 129 34

Stenderup v. Broadway St. Bank, 219 Cal. 593, 28 Pac. (2d) 114 ..... 13, 14

Stevirmac v. Ditman, 245 U. S. 210 34

Swallows v. Tungston Products Co., 205 Cal. 207, 270 Pac. 366 13

United States v. Throckmorton, 98 U. S. 61, 66, 25 L. Ed. 93 ..... 12, 14, 15, 16, 22, 23

Vance v. Burbank, 101 U. S. 514 19

Watson v. Dillon, 6 Cal. (2d) 33 13

TEXTBOOKS.

31 American Jurisprudence, par. 64, at p. 230 20

31 American Jurisprudence, par. 655, at p. 223 21

15 California Jurisprudence 14 ..... 13, 14

Freeman on Judgments, 5th Ed. 2690, Sec. 1296 12

Freeman on Judgments, Vol. 3, p. 2567, 5th Ed. 1925 19

IN THE

United States Circuit Court of Appeals

FOR THE TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELL WOODRUFF and LEONARD J. WOODRUFF,
Appellants,

vs.

M. E. HEISER,
Appellee.

PETITION FOR REHEARING.

I.

The Alleged Frauds and the Judicial Determinations Thereof.

There are two frauds involved in these proceedings. The first fraud is that alleged by Appellee M. E. Heiser, as plaintiff, in his California complaint, which is the fraud of Woodruff, the bankrupt, resulting in the California judgment by the United States District Court at Los Angeles, rendered, entered, docketed, endorsed and filed March 20, 1930, in that court. [Tr. Vol. I, p. 10.] The second fraud is the alleged fraud of M. E. Heiser in procuring the said judgment March 20, 1939, against Leonard J. Woodruff. It is the subject of this latter alleged fraud of M. E. Heiser in procuring that judgment of March 20, 1939, that has been in issue since first

tendered by the proceedings filed by Leonard J. Woodruff nine days after the entry of such judgment resulting in judgment against Woodruff, continuing on into the prolonged trial before the same court on the issue of value, also determined against Woodruff, and continuing on in the proceeding had by P. M. Jackson, trustee, in behalf of the Woodruff family as creditors in bankruptcy and Leonard J. Woodruff, the bankrupt, before the same trial court at Los Angeles, resulting again in judgment against P. M. Jackson, trustee, for the creditors and the bankrupt, and on again into their appeal from that judgment to the U. S. Circuit Court of Appeals for the Ninth Circuit, which judgment was by that court affirmed by their unanimous opinion. (111 F. (2d) 310.) And now again we still are confronted with the very same issue, alleged fraud of Heiser.

While the majority opinion in the case at bar holds that the "trustee was acting for all the creditors of the estate of the bankrupt and the determination of such issues adverse to him constitutes *res adjudicata* here to that extent and protects judgment against collateral attacks on those grounds," it also holds that in the contest before the referee in addition to the grounds upon which the trustee's proceedings were based, "It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties." The objections referred to are again the same contentions by the same Woodruff family.

We submit that each and all of the foregoing charges were fully covered by the grounds of the contest by P. M. Jackson, trustee, before the court at Los Angeles and form a part of the record on the appeal by the trustee, which resulted in a determination adverse to him. [Obj. Exh. DD.] It would appear to this petitioner that there may not have been sufficiently called to the attention of this Honorable Court, and therefore may not have been adequately examined by it, Objector's Exhibit 8, referred to on page 339 of Volume I of the transcript before it, and also described as Objector's Exhibit DD, referred to at page 1013 of Volume II of said transcript. It is referred to again in the referee's certificate on review as Objector's Exhibit DD at the bottom of page 150 of Volume I. Reading from the referee's certificate on review at the bottom of page 150, Volume I:

> "Objector's Exhibit DD, 7-27-42, is a certified transcript of record upon appeal from the District Court of the United States for the Southern District of California, Central Division, in No. 9356, United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. This transcript of record (Exhibit DD) apparently is a complete record of the proceedings in which Heiser obtained the default judgment, and also the proceeding in connection with the motion of P. M. Jackson, trustee in bankruptcy, and Leonard Woodruff."

Objector's Exhibit DD, also known as Objector's Exhibit No. 8, is therefore a part of the record before this Honorable Court and clearly shows the issues raised by

the various aforementioned proceedings before the trial court at Los Angeles by P. M. Jackson, trustee, on behalf of the creditors which are the Woodruff family and Leonard J. Woodruff, all of which proceedings, pleadings, and papers are made a part of the proceedings initiated by the trustee in the Los Angeles court, and so declared in his notice of motion, which appears at page 277 of Exhibit DD.

The notice of motion which also appears in the transcript of record herein at page 275 states upon what specific papers it will be made, which include "the affidavit of merit of Leonard J. Woodruff [p. 159]; the affidavit of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff [p. 272]; upon the verified answer of Leonard J. Woodruff now in the files of the above entitled proceeding [p. 132]; upon the proposed *verified answer* of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff [p. 242]; the affidavit of Francis B. Cobb, attorney for said P. M. Jackson; the *affidavit of merit* of Leonard J. Woodruff filed in the above entitled case [p. 160]; and the affidavit of Leonard J. Woodruff answering plaintiff's affidavit in opposition to Leonard J. Woodruff's motion as one of the defendants [p. 192]; etc. The foregoing page numbers in brackets are to pages of the *transcript in case No. 9356, Exhibit DD*, before this court as an exhibit.

The motion of the trustee further states that it "will be made upon the files and records of the proceedings herein, and upon the affidavits above set forth, and upon the law and points and authorities submitted herewith." [Obj. Exh. DD, p. 272.]

Therefore the record of proceedings before the Los Angeles court up to that time, which are included in the

certified transcript, Exhibit DD, created the issues before the court in the trustee's proceedings. That motion of the trustee also states, as item (c) thereof: "That the complaint does not show title in M. E. Heiser as a judgment and execution sale alleged in the complaint have not been set aside or attacked." And in (b) "That the complaint shows that the title to said merchandise passed to the Golden State Gem Company, a Nevada corporation.", and that "said motion will be made upon the ground that a *fraud* was practiced upon the above entitled court with respect to the entry of the said judgment." The motion goes on to say that it "will be made upon the further ground that Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy of the estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged causes of action, and that they have been prevented from presenting said defense upon any trial of the merits by reason of *fraud*, accident, surprise and excusable neglect, as is more particularly shown by the affidavits herein above mentioned and herein filed in the above entitled proceedings."

We must then look to the affidavits and proposed answers which specifically allege the *frauds* put in issue. We submit, however, that under these proceedings the creditors, through the trustee, could have set up any and every *fraud* that they desired to specifically charge, and that they did so by the affidavits and proposed answers disclosed in the proceedings in the transcript, Objector's Exhibit DD.

At the end of the opinion of the Circuit Court of Appeals in the Ninth Circuit case [Tr. Vol. I, p. 294], it states: "As a further (and final) ground of their motion, appellants stated that they, Jackson and Woodruff, had a good defense to the action but were prevented from presenting it by reason of *fraud*," etc. "As to Woodruff the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it." Can it therefore be said in the face of this Circuit Court unanimous opinion and these proceedings that the issue "that the judgment was obtained by *fraud*" was not a claimed ground of the motion? The opinion further recites that because of such issue before the trial court (the foregoing *fraud* issue) such proceeding instituted by Jackson, trustee, and Woodruff, was in effect an independent action or proceeding and therefore appealable as a final decision. Yet the majority opinion of this court holds in effect that Jackson, trustee, and Woodruff did not charge at the Los Angeles trial court that the judgment of March 20, 1939, was obtained by *fraud* or in effect that such charge was made and that the Woodruff family as alleged creditors withheld or were entitled to withhold certain alleged frauds to be resurrected and contested before the referee in this litigation on *ad infinitum*. Even if the specific charges were not identical could the objectors through the trustee set up fraud generally in an independent action, tender such issues which were denied by Heiser, and determined against the trustee, then contend before the referee the issue of fraud was abandoned

or that they have another fraud they wanted to reserve for the referee's decision. This is precisely the effect of the present situation disclosed by the majority opinion. We submit, even under the facts set up in this opinion, the failure of the trustee to prove the issue of fraud tendered by him or his abandonment thereof in the proceedings at Los Angeles or in his appeal should clearly add finis to this issue.

The affidavit of P. M. Jackson, trustee, in support of his motion to vacate, etc., filed in his proceedings at Los Angeles, appears on page 272 of Exhibit DD, and also appears in the transcript in the present case in Volume I, pages 278 to 280. In this affidavit the trustee says: "Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes *is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors*, and your affiant as representative of said creditors and in the event said judgment is set aside, the alleged claim of M. E. Heiser can be defeated in whole at a trial on the merits." And the said trustee's affidavit before the trial court at Los Angeles, says further: "That plaintiff and his attorney knowing said facts, *have attempted to practice and did practice fraud upon the above entitled court and upon Leonard J. Woodruff in procuring the entry of said judgment* and said default judgment." And then he states that he "believes and has been advised by his attorneys above named that the grounds set forth

in the said instruments exist and that the same possess merit, and that if granted the claim of M. E. Heiser as set forth in said complaint, and each count thereof, can be defeated in whole, and that the property of this estate can be released from the lien of said judgment" etc.

In the amendments to the objections of Willie Mae Woodruff to the claim of M. E. Heiser [Tr. Vol. I, p. 122] the objector sets up that the claimant was guilty of fraud on the Court and of perjury in obtaining said judgment in that he alleged in his complaint, and *apparently* testified under oath in the District Court of the United States in and for the District of California on the *20th day of March, 1939*, that in June and July of 1928 he was possessed of 1200 ounces of blue sapphire rough, etc., which property he alleged was of a value in excess of $100,000.00 and that he deposited said gems in the United States National Bank at Eighth and Spring Streets, Los Angeles, California, when in truth and in fact said M. E. Heiser was not possessed of said gems above described and did not deposit the same in said bank, and she goes on to state that she is prepared to prove that he did not possess the gems at said time and did not deposit the gems of like quantity or quality in said bank as testified to by him in order to obtain the said judgment. There is no evidence before the Referee of any testimony of M. E. Heiser prior to the rendition of the Judgment March 20, 1939. Then said amendment sets forth the so-called $30,000.00 claim filed in the matter of the bankruptcy of the Golden State Gem Company, which is the same allegation

as contained in the proceedings before the Los Angeles Court as we have shown from objects Exhibit DD.

The protest and objections of the bankrupt to the Heiser claim [Tr. Vol. 1, p. 77] and the objections of Willie Mae Woodruff [Tr. Vol. 1, p. 41] and the amendments to her objections [Tr. Vol. 1, p. 122] include all of the charges sought to be placed in contest before the referee on the Heiser claim. The answer of Heiser to these objections [Tr. Vol. 1, pp. 86 and 99] clearly set forth in detail the trial of these same issues in the California courts in behalf of the same creditors. We have heretofore dealt with the amendments to the objections which are only an allegation of perjury in the obtaining of said judgment in what Heiser "apparently" testified to on March 20, 1939, and his filing of his claim in the matter of the bankruptcy of the Golden State Gem Co. (a Woodruff-Smith Company) for $30,000.00 and the Loller matter, all of which was expressly before the California court by affidavits in the same verbiage filed in behalf of Woodruff in his first motion to vacate and in behalf of the trustee and Woodruff in the second motion in affidavits and the proposed answers. All of these instruments before the California court containing these same allegations appear in Exhibit DD, transcript of the record before that court, on the following pages: Fitzpatrick affidavit, Exhibit DD, page 126; Jackson affidavit, Exhibit DD, p. 272; Leonard J. Woodruff affidavit, Exhibit DD, page 159, and another at page 192 and another at page 160; answer of Leonard Woodruff, Exhibit DD, page 132; answer of P. M. Jackson, Exhibit DD, page 248.

And denial of these charges by M. E. Heiser in the same Exhibit DD, pages 76, 80, 169, 206, 282, 281.

For answer to these charges of fraud placed in issue by P. M. Jackson, trustee, and the bankrupt before the Los Angeles court, M. E. Heiser, as respondent in said proceedings, denied each allegation thereof. At page 281 of Exhibit DD appears a denial of fraud under oath of Leonard J. Meyberg, an attorney of record for M. E. Heiser in said proceedings. We quote therefrom:

> "Denies that plaintiff and/or his attorney and/or this affiant have attempted to practice and/or did practice fraud upon the above entitled court and/or upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment herein, or otherwise, or at all. Denies that any fraud whatever has been practiced upon this court by affiant as attorney for plaintiff, or otherwise, or at all, or by plaintiff."

M. E. Heiser categorically denied all of the charges of fraud and at the close of one of his counter-affidavits in the trustee's proceedings at Los Angeles he says:

> "This affiant, plaintiff herein, denies that he and/or his attorney have attempted to practice and/or did practice fraud upon the above entitled court and/or upon the said Leonard J. Woodruff in procuring the entry of the said judgment and said default judgment, or as defendant Leonard Woodruff or the alleged trustee Jackson alleges, or otherwise, or at all; denies that any fraud has been committed upon the above entitled Court by plaintiff or his attorney."

II.

Intrinsic and Extrinsic Fraud.

Only Where the Fraud Alleged Was Extrinsic or Collateral to the Matter Which Was Tried and Determined by a Court in His Judgment or Decree Can Be Used to Collaterally Attack It; Intrinsic Fraud Is Insufficient to Warrant Setting Aside the Judgment or Orders Under Attack.

In Equitable relief cases the Supreme Court of California in a long line of decisions has held firmly to this rule. (91 Cal 129; 18 Cal. (2d) 584; 19 Cal. (2d) 83; 20 Cal. (2d) 397; etc.) In *Horton v. Horton*, 18 Cal. (2d) at 584, the Supreme Court says: "The rule is well settled in this state that mere false allegations by the plaintiff, in her pleadings do not constitute such fraud as to justify equitable interference since the truth or falsity of the matters alleged is conclusively determined by the judgment, in the absence of some other ground for relief." The Supreme Court then quotes from the *Hanley* case, 114 Cal. 690: "It is settled beyond controversy that a decree will not be vacated merely because it was obtained by forged instruments or perjured testimony. In the *Horton* case at p. 585, the Court says: that the allegations in the present complaint decrease the intrinsic fraud going into the merits of the first action which the plaintiff should have exposed in the original proceeding. Instead he permitted a default to be taken against him and so admitted the truth of the material facts averred in the plaintiff's pleading. This decision goes on to quote from *Harvey v. Griffith*, 133 Cal. App. 17. 22 and 23: "It is immaterial that the judgment which is assailed was procured by default. The defendants in that action had an opportunity to appear and protect their interest. They deliberately

waived the right to their day in court by failing to appear and answer the complaint. A default judgment is an estoppel as to all issues necessarily litigated therein and determined thereby, exactly like any other judgment, provided the court acquired jurisdiction of the parties and subject matter involved in the suit. (Freeman on Judgments, 5th Ed. 2690, Sec. 1296.)" The case then holds "since the procuring of a judgment by mere intrinsic fraud will not justify the court in setting it aside, it is plain that the defendant has failed to state on this ground a cause of action for equitable interposition."

In this *Horton* case, 18 Cal. (2d) p. 584, it appears that the defendant filed an action in equity to set aside the decree of the court entered in an independent action between the parties. The court cites the following: "In the leading opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66, 25 L. Ed. 93, the court in an extended discussion of the rationale of this almost universally accepted rule based upon the distinguishing features of these two types of fraud, concluded that equitable aid will be granted where it appears that "by some fraud *practiced directly upon the party seeking relief* against the judgment or decree that party has been prevented from presenting *all* of his case to the court." The opinion then states that thus the question to be decided is whether the defendant has stated a case of extrinsic rather than intrinsic fraud. At p. 584: "An examination of the authorities as to what fraud will warrant the aid of equity discloses that only upon proof of *extrinsic* and *collateral* fraud can a plaintiff secure equitable relief from a judgment. A showing of fraud practiced at the hearing of the original action will not suffice. This is characterized as *intrinsic* fraud and since there must be an end to litigation and such fraud was a

part of the case presented in the former suit, equity will not reopen the matter." (*Pico v. Cohn*, 91 Cal. 129, 133; 25 Pac. 970; 27 Pac. 537; Am. St. Rep. 159; 13 L. R. A. 336.) It was contended by the defendant in the *Horton* case that the judgment obtained by the plaintiff is void because obtained by fraud and misrepresentation practiced by the plaintiff therein upon the court. That plaintiff was the defendant in the equity action before the Supreme Court on appeal.

In *Hammell v. Britton*, 19 Cal. (2d) at p. 72, the Supreme Court considers the sufficiency of a complaint in an action for equitable relief from a judgment of a court of another state, and the court holds: "A party is not entitled to equitable relief from a judgment on grounds that would have been a defense to the original action, in an absence of a showing of some appropriate equitable excuse for not having made the defense or for having been unsuccessful if such defense was made." "In an action for equitable relief based on extrinsic fraud in obtaining a judgment, the facts constituting the fraud must be pleaded with particularity and specifically. Mere allegations that a judgment of a court of a sister state was obtained by fraud and collusion are insufficient where there are no allegations of the facts constituting a fraud." The fraud sufficient to justify equitable relief from a judgment must be extrinsic or collateral to justify the questions examined or determined. False or perjured testimony is intrinsic fraud against which a defense may be made at the trial. (*Eisenmayer v. Thompson*, 186 Cal. 538; 199 Pac. 708; *Watson v. Dillon*, 6 Cal. (2d) 33; *LaSalle v. [illegible]*, 220 Cal. 739; 32 Pac. (2d) 612; *Swallows v. [illegible] Products Co.*, 205 Cal. 207; 270 Pac. 366; *[illegible] v. Broadway St. Bank*, 219 Cal. 593; 28 Pac. (2d) 114, 115

Cal. Jur. 14.) And in the *Hammell v. Britton* case, 19 Cal. (2d) at 582, the Supreme Court says: "But even more significant is the fact that there is not a single allegation in the amended complaint that establishes that plaintiff was prevented by fraud from making any defense available to him in the California case."

We submit that it is most significant in the present case that there is not a single allegation in any of the objections of any of the creditors which have created the contest here and form the issues before the referee, which establishes that P. M. Jackson, Trustee, in behalf of the creditors or the bankrupt Woodruff "was prevented by fraud from making any defense available to him in the California action."

All of the foregoing cases are cited in an opinion rendered March, 1944, in the case of *Rogers v. Mulkey*, 63 Cal. App. (2d) 575, following the leading case of *U. S. v. Throckmorton*, 98 U. S. 61, 25 L. Ed. 93, holding that fraud or mistake is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court or if an unsuccessful party to an action has been kept in ignorance thereof or has been prevented from fully participating therein. We submit that none of the issues in the contest before the referee approved by the majority opinion "that the material allegations in the complaint were knowingly false" and "that the judgment (March 20, 1939) was secured through the use of perjured testimony given by Heiser" include any extrinsic fraud or any assertion thereof, whether measured by the foregoing cases or otherwise, and that intrinsic fraud has no reference to the underlying claim in the circumstances of the case at bar, but if it has then the judgment of the court at Los Angeles being final against the trustee and

the bankrupt subsequent to the date of adjudication, we have a clear case where the bankrupt, himself, and the present objecting creditors through the referee have instituted the attack in the California court; they have not been prevented from full participation therein, or if any claim was made that they were prevented therefrom they did not raise such qustion in their appeal and are concluded thereby from so doing before the referee.

It is conclusive, therefore, by the judgment of the Ninth Circuit Court against these creditors and the bankrupt that they have not been prevented from full participation in our proceeding in California, they have had an opportunity to present their case in court and to protect themselves from any alleged fraud attempted—or practiced—by Heiser all as charged, denied and not proved in their proceedings through the trustee at Los Angeles. These cases all hold, as in *Rogers v. Mulkey, supra*, and the Federal *Throckmorton* case that intrinsic fraud even though the unsuccessful party does not avail himself of the opportunity to assert the fraud, he having had an opportunity to protect his interest, he cannot attack the judgment once the time has elapsed for appeal or other direct attack. Surely this rule is too well established in equity proceedings under Federal procedure and in California and elsewhere to be subject to doubt. The bankruptcy proceedings being proceedings in equity surely are governed by this accepted equity rule with respect to intrinsic and extrinsic fraud and the effect thereof on the underlying claim after a contest in equity by the trustee in behalf of these same creditors and the bankrupt himself who thereafter have created the subsequent contest before the referee, and after the previous proceedings have become final against them in California.

In the *Throckmorton* case, 98 U. S. 61, it is said "The frauds for which a bill in chancery will be sustained to set aside a judgment or decree between the same parties rendered by a court of competent jurisdiction, are frauds extrinsic or collateral to the matter tried by the first court and not a fraud which was in issue in that suit." Applied to the case at bar fraud was in issue in the proceedings had by the trustee and the bankrupt before the Los Angeles court which were determined against them. We submit that in the trustee's proceedings at Los Angeles under the issues tendered they were able to have the court determine the issue of both intrinsic and extrinsic fraud but the issue having been tendered before the Los Angeles court by the trustee and the bankrupt and having been "denied, not proved" and determined against them, the issue of intrinsic fraud is no longer available to them before the referee and no extrinsic fraud is charged in the referee proceedings. Further quoting from the *Throckmorton* case: "The cases in which such relief has been granted are those in which by fraud or deception practiced on the unsuccessful party he has been prevented from exhibiting fully his case by reason of which there has never been a real contest before the court of the subject matter of the suit. That the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree between the same parties rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court and not to a fraud on the matter to which a decree was rendered." That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses by reason of the endless nature of the strife, is

greater than any compensation arising from doing justice in individual cases. In fact, one great, if not fatal defect in the bill is the absence of any declaration by which the fraud has been discovered or can be now established.

In *Prudence Corp. v. Geist*, 316 U. S. 89, at p. 95, cited in the majority opinion, it is said that it is for that court to define and apply Federal law in determining the extent to which the equitable conduct of a claimant in acquiring or asserting his claim in bankruptcy requires it in classification of claims but not without appropriate regard for rights acquired under rules of state law. We submit neither the Federal law or the rules of state law, as we have shown would permit retrial of intrinsic fraud before the referee in the face of the plea of *res adjudicata* upon a charge that Heiser "apparently" testified falsely before the Los Angeles court at the time the judgment was entered, March 20, 1939, with no other or further charge of just what he "apparently" testified to and what evidence exists thereof. There is none in the record here.

In *Pepper v. Litton*, 308 U. S. 295, we submit that the technical proceeding under Virginia law filed by the trustee would not have availed him an opportunity to tender the issue of fraud involved in that case, which was collusion between the creditor and the bankrupt ("where the confessed judgment was merely a step in a general fraudulent plan to defeat the creditors," etc.), and the proceeding was had before the referee without a plea of *res adjudicata*. This is a far cry from the situation before the referee in the case at bar, for here the trustee charged "fraud in obtaining the judgment" which was denied and not proved, as held by the Ninth Circuit

Court and the transcript [Exhibit DD] of the proceedings had before the Los Angeles court fully show that the issue that "fraud" was practiced upon the court with respect to the entry of judgment, and that the "judgment is based upon fictitious values and was obtained by methods which amounted to a constructive fraud and in the event the said judgment was set aside can be defeated in whole at a trial on the merits." Therefore the proceedings themselves show that the issue of fraud was before the court, notwithstanding that the determination of the fraud issue against the trustee and the bankrupt was abandoned in the appeal to the Ninth Circuit Court except to assert that fraud was in issue in order to establish before the Ninth Circuit Court that the proceeding in the District Court in effect an independent equity action based upon fraud, and as such appealable as a final decision. Otherwise had the trustee and the bankrupt limited their proceeding to a motion under 60d for intrinsic fraud the appeal would have been dismissed, as shown by the unanimous opinion.

The law must intend that something was settled by the judgment against the trustee and bankrupt in the Los Angeles District Court and in the appeal therefrom. The doctrine of *res adjudicata* has been variously stated. Without repeating all the definitions and varying shades of thought, we quote from 34 Corp. Jur. p. 743, paragraph 1154:

> "Any right, fact or matter in issue and directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and

privies whether the claim or demand, purpose or subject matter of the two suits is the same or not."

In *Flood v. Templeton*, 152 Cal. 148, at p. 155, 92 Pac. 78, 81, 13 L. R. A., N. S. 1579, the rule was thusly stated:

> "The rule is that it will not relieve when the fraud charged relates to matters upon which the judgment was regularly obtained and where an opportunity was given to the party against whom it was entered to contest the matters in issue, or present any defense which was available, fraud which was directed to or bore upon the claims in issue which was before the court for determination, as when a judgment is entered on a fraudulent claim, or is procured by false testimony where the party had an opportunity to be heard as to these matters."

Freeman on Judgments, Vol. 3, p. 2567, 5th Ed. 1925, put the accent on perhaps the main distinction between intrinsic and extrinsic fraud:

> "It must be borne in mind that it is not fraud in the cause of action but fraud in its management which entitled a party to relief."

The effect of the contest before the referee in the case at bar is to annul the judgment of the Los Angeles District Court on the contest between the trustee representing the creditors and the bankrupt on the one side and claimant Heiser on the other, the same parties and also to annul the judgment of the Ninth Circuit Court affirming the decision of the District Court where the referee's determination reverses the determination of these two courts. In *Vance v. Burbank*, 101 U. S. 514 it is held that false testimony is not enough. It is sufficient

to say regarding this fraud charge before the referee, that if in fact it existed, was discovered long before the contest in the Los Angeles court and if it had any importance in the case the amplest opportunity was given to the trustee and the bankrupt and before the District Court and the Ninth Circuit Court to show error and get relief. This rule is fully commented on in 31 Am. Jur. 230, 232, paras. 654, 655, and 656. It is upheld in Oklahoma in *Clinto v. Miller*, 96 Okla. 71, citing R. C. L. and in *El Reno etc. v. Sutton*, 41 Okla. 297. These cases hold "Intrinsic fraud is not sufficient for equitable relief."

In 31 Am. Jur., paragraph 64, at p. 230, it is said:

> "The acts for which a court of equity will, on account of fraud, grant relief from a judgment, have relation to extrinsic or collateral fraud; intrinsic fraud is not sufficient for equitable relief. Fraud has been regarded as intrinsic within the meaning of this rule where the fraudulent acts pertaining to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The latter rule is set out in Root v. Woolworth, 150 U. S. 401, 37 L. Ed. 1123, 14 S. Ct. 136."

In *Kiely v. McGlynn*, 21 Wall. (U. S. 503, 22 L. Ed. 599) this rule is supported, holding that fraud will not vitiate adjudication where a plaintiff has a day in court with knowledge of, or opportunity for showing the fraud and where a party to an action at law has knowledge of a fraud which he could plead therein and neglects to do so, he cannot thereafter obtain relief in a court of equity

against the judgment at law on the ground of such fraud, and as to such the judgment must forever preclude him.

Fayerweather v. Ritch, 195 U. S. 276; 49 L. Ed. 193;

Marine Ins. v. Hodgson, 3 L. Ed. 362,

Grubb v. Public Utility, 281 U. S. 470; 478, 479;

Pickford v. Talbot, 225 U. S. 651;

Leavenworth v. Chicago Co., 134 U. S. 688;

New York L. Ins. Co. v. Bangs, 103 U. S. 780;

Brown v. Buena Vista, 95 U. S. 157;

Crim v. Handley, 94 U. S. 652.

There is no reason indicated in the majority opinion why the "contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud was thus committed on the court and the parties," was not submitted to the court in California by the proceedings had there by the trustee and the bankrupt, if such was the case, and we submit that the foregoing cases all hold that equity will not permit presentation of a claim of fraud by piece-meal to upset a judgment or in defeating it through an intrinsic attack on the "underlying claim," all of which was before the Los Angeles court in behalf of the contesting creditors.

Paragraph 655 at p. 223 of 31 Am. Jur. gives the reasons for the distinction.

> "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be tried in an action for equitable relief against the judgment and otherwise litigation would be interminable."

We submit this equity rule applies in the Bankruptcy Court as to a retrial of the issued before the Los Angeles Court tendered by the Trustee.

It has been uniformly held that relief will not be granted against a judgment obtained by false testimony unless it appears that the alleged false, fraudulent or perjured testimony was material to the issue being tried, that except for falsity or perjury the question raised would have been fully presented or adjudicated at the former trial, which is the rule set down in *El Reno, etc. v. Sutton*, 41 Okla. 297, and that the result thereof would have been different. Most cases support the doctrine that false testimony alone does not constitute sufficient cause for equitable relief from a judgment obtained thereby.

Moffett v. U. S., 112 U. S. 24, 28 L. Ed. 623;
Nickols v. Stephens, 157 U. S. 370, 39 L. Ed. 736;
United States v. Throckmorton, supra;
People v. Cohn, supra;
Solar v. Solar, supra.

Perjury upon the part of a plaintiff is not considered as constituting a case falling within the rule permitting a court of equity to relieve a party against a judgment taken against him.

Nelson v. Meehan, 155 Fed. (1d) 12.

"The weight of authority and reason is that a claim in bankruptcy is not liquidated by a judgment after the filing of a petition in bankruptcy unless the judgment results from litigation at the direction or with the consent of the bankruptcy court."

Re Paramount Public Corp., 85 Fed. (2d) 42.

The leading Federal opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66, on the subject of fraud is upheld in this long line of California Supreme Court cases herein cited to date, and in 130 Fed. (2d) 44, 56, Fed. Sup. 234, and we submit is the accepted rule which we respectfully submit the majority opinion of this court cast aside. The fraud alleged in the objections, identical with the fraud alleged by the trustee in the proceedings in the California court, was not extrinsic or collateral to the matter which was tried and determined by the judgment of March 20, 1939, or by the judgment of the Los Angeles District Court in the proceedings commenced by the trustee in behalf of the same contesting creditors and the bankrupt, but was intrinsic fraud, which is insufficient to warrant the setting aside of either judgment under attack.

In *Pepper v. Lytton, supra*, the fraud alleged which formed the issue before the referee was plainly extrinsic. It was collusion between the bankrupt and the judgment creditor by reason of which collusion the judgment had been obtained, and in absence of the plea of *res adjudicata* based upon the previous action taken by the trustee, such a plea was held to be proper. Had it been possible for the trustee in that case to have raised such an issue before the Virginia court and had he failed so to do, and had the plea of *res adjudicata* been raised, we submit the opinion plainly shows the result would have been different.

> "A creditor so far as he relied upon bankruptcy trustee to protect the estate from improper claims, is bound by what trustee does or fails to do."

In re: American SS Nav. Co., 14 Fed. Sup. 106, affirmed in *Cooper v. Rauch*, 80 Fed. (2d) p. 1005.

The foregoing citation was adopted by Chief Justice Hughes from a decision rendered by Justice Fields on *res adjudicata* many years ago in *Cromwell v. County of Sac*. 94 U. S., 351, which has been followed in many decisions of the U. S. Supreme Court.

In the case of *Beneficial Loan Co. v. Noble*, 125 Fed. (2d) 425 at Suddiv. 6, it says: "Here, however, the bankruptcy court would not undertake to exercise its jurisdiction with respect to the allowance, rejection, or subordination of a claim, but undertook to inquire into the merits of the cause of action for fraud upon which the state court judgment was predicated and to enjoin the enforcement of that judgment on the ground that the claim of fraud was without legal validity. That is to say, it undertook to relitigate the matters which had been heard and determined by the state court. This, we think, it was precluded from doing under the doctrine of *res adjudicata*."

The charges in the affidavits of Willie Mae Woodruff and Leonard J. Woodruff, upon which they contest the claim of Heiser, we submit are merely to relitigate the identical allegations which they filed in behalf of the trustee and Woodruff before the court in Los Angeles and which had been heard and determined by it. Chief Justice Hughes said in *Chicot Co. Dist. v. Bank*, 308 U. S. 371: "Where an action is litigated and determined by judgment it is as conclusive, so far as future proceedings are concerned, as though the defenses never existed. The language therefore which is so often used that a judgment estops not only as to every ground of recovery or defenses actually presented in the action, but also as to every ground which might have been presented is strictly accurate."

When applied to the proceeding commenced by P. M. Jackson, trustee, in behalf of the creditors before the court at Los Angeles, and the judgment of the United States District Court at Los Angeles determining such proceedings in behalf of the creditors against them, and their appeal of such determination to the United States Circuit Court of Appeals for the Ninth Circuit, surely it cannot be said after reading the Transcript of the Record in that case (objector's Exhibit DD) that every general and specific charge in the objections presenting the contest of fraud before the referee which were contained in the affidavits of Willie Mae Woodruff and Leonard J. Woodruff were not alone grounds of fraud presented in the action before the District Court, because each allegation of fact is identical with those contained in said record, but certainly every one of said grounds of fraud were within the issues presented by the motion and were grounds which could have been presented within said issues and could not have been reserved for future use in continuing the litigation of the Heiser claim before the referee.

In the case at bar we have the identical allegations of fraud in the objections of the creditors before the referee, creating the issues of the contest as appeared in the pleadings and papers filed by the bankrupt in two previous hearings before the trial court at Los Angeles and by their trustee Jackson in his papers and pleadings in what was determined by the Circuit Court of Appeals of the Ninth Circuit, to have the effect of an independent action in equity to set aside the judgment and therefore appealable. We submit that in proceedings under 60(b) before the trial court the Trustee, could have raised both intrinsic and extrinsic matters and that for his equitable relief action he was limited to extrinsic fraud.

THE FINDINGS OF THE REFEREE:

At p. 151 of the Tr. Vol. I in the Certificate of Review of the referee *in re* the claim of M. E. Heiser there appears the Referee's Findings of Fact. The first Finding at p. 151 is that "Heiser testified *at the hearing to redetermine value* in *Heiser v. Woodruff*, District Court of California: 'I represented the Queensland government at the Panama Exposition as their expert cutter for demonstration in 1915 at San Francisco, cutting to demonstrate how the gems were cut and how they were mined.' In his deposition in this proceeding he stated he was not the *official representative* of any government." It then goes on to say that depositions of three Australian officials state that "Heiser was not an *official representative* of the Australian government nor of any state government of Australia, etc., but they admitted that he obtained permission to operate a small lapidist's bench in the Australian Pavilion and that he was not to sell articles therein but that he sold gem stones at his bench and the Australian Commissioners withdrew his permit to exhibit within the Australian Pavilion."

It must be borne in mind that the judgment in the *Heiser v. Woodruff* case was rendered, entered, docketed, endorsed and filed in the U. S. Circuit Court of Appeals March 20, 1939, which judgment became final three months thereafter on June 20, 1939 [Tr. Vol. I, p. 10] and the hearing redetermining value was in June 1939, determined June 29, 1939. [Tr. Vol. I, p. 274.]

The allegation of perjury to which we assume this finding refers, appears in the amendments to the objections of Willie Mae Woodruff, etc., appearing in Vol. I, p. 122 of the Transcript, wherein the allegation is made: "The claimant M. E. Heiser was guilty of fraud on the court

and on the parties to the action, and guilty of perjury in obtaining the said judgment in that, he alleged in his complaint, and *apparently* (*italics ours*) testified under oath in the District Court of the United States in and for the Southern District of California on the 20th day of March 1939, that in June and July of 1928, etc." There was no Transcript of evidence before the referee of any testimony of M. E. Heiser, under oath or otherwise, in any court on the 20th day of March 1939.

We submit there is no basis for an allegation of perjury or fraud based upon what Mr. Heiser "apparently" testified to on March 20, 1939, with nothing whatever in the record before the referee or this court as to what such testimony consisted of wherein the objector alleges perjury was committed. We submit that this charge falls of its own weight and is wholly insufficient to constitute any charge of perjury before the referee even if it were held that such a fraud was not alleged by P. M. Jackson, Trustee, in the court at Los Angeles, or that he could not have raised such issue there, or that it was extrinsic fraud. This is before this Honorable Court now and surely this charge does not warrant going back to the District Court for further proceedings.

The next Finding by the referee appearing in Vol. I, at p. 152 of the Transcript is: "All this material, according to Heiser's testimony (being the $164,000.00 of the uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles, etc." There being no transcript of evidence at the proceedings of March 20, 1939, the date the judgment was entered, or of any proceedings prior thereof, we submit none of this is material even if it were to show a fraud. The Finding then goes on to state that in Los An-

geles the material was stored in the U. S. National Bank and none of it was removed until it was taken by Woodruff, and it goes on to follow with Findings similar to those alleged in Heiser's original complaint and then it proceeds to state that Woodruff bought 35 sacks of the 36 at an execution sale (had on his own judgment), and one sack was purchased by one Oreck for his son, and that Oreck testified, though it is not stated which one, that he selected what he thought was the best sack of material but that it proved later to be of no value. The next Finding is that while Heiser was in Europe the Golden State Gem Company of California (an exclusive Woodruff-Calvin Smith enterprise) was adjudged bankrupt in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother-in-law, which was disallowed and on appeal the appeal was dismissed.

We submit there is nothing in these Findings of the referee, all of which appear before this court in Transcript, Vol. I, p. 151, 152 and 153, which in any way supports any fraud on the court, on the parties, or anyone, either intrinsic or extrinsic, and that each and every matter appearing in such Findings and in the objections which created the contest before the referee was before the trial court at Los Angeles on two occasions in proceedings instigated by Woodruff, and in one instance by P. M. Jackson, Trustee, in behalf of the creditors, and both before the Circuit Court of Appeals, Ninth Circuit, affirming the lower court against them. They are fully set up in the proposed answers of P. M. Jackson, Trustee, and Leonard Woodruff, filed in the proceedings before the trial court of Los Angeles in the affirmative defenses therein, which are set up in the Transcript of the Los Angeles trial court proceedings (objector's Exhibit DD, pp. 132 and 248) in the present case.

In the Transcript of the Record in the case before the Ninth Circuit of the Circuit Court of Appeals [objector's Exhibit DD] the answer of Woodruff appears at p. 132 thereof, and the answer of P. M. Jackson, Trustee, appears at p. 248 thereof. Both of these proposed answers formed a part of the issues tendered by the proceedings of P. M. Jackson, Trustee, in the trial court at Los Angeles and so expressly declared in the notice of motion filed by P. M. Jackson Trustee, therein. [objector's Exhibit DD, p. 277.] In the proposed answer of the Trustee filed in support of his proceedings before the Los Angeles trial court [objector's Exhibit DD, p. 248] each of the material allegations of the complaint of M. E. Heiser are denied raising the issue that the allegations of the complaint are false and untrue. In paragraph VI of the complaint [objector's Exhibit DD, at p. 4] Heiser alleges that he was the sole and exclusive owner of the raw gem material specifically described therein, which is the same material set up in the amendments to the objections of Willie Mae Woodruff to the claim of M. E. Heiser appearing in Transcript Vol. I, p. 123, wherein the objector alleges that in truth and in fact the plaintiff Heiser was not possessed of the said gems, etc., and M. E. Heiser in his complaint alleges "that at all times herein referred to plaintiff was in possession of and at all times herein referred to entitled to possession of the raw gems." In the proposed answer of the Trustee, at p. 250 of the objector's Exhibit DD, the trustee "denies each and every allegation contained in said paragraph VI" and the trustee goes on to allege that he is "advised that on or about the first day of September 1928, that said M. E. Heiser sold, transferred and parted with possession and ownership of said property alleged in said paragraph VI by transferring the same to the Golden State

Gem Company of Nevada and received in payment therefor certain shares of stock from said corporation." And again in paragraph X of the proposed answer of the Trustee in the proceedings at Los Angeles, appearing at p. 254 of objector's Exhibit DD, the Trustee, alleges "that said M. E. Heiser did cause to be sent to Los Angeles some 40 sacks of gravel which were of no or little value and in no event exceeding the sum of $1,000.00."

On pages 268 and 269 of the objector's Exhibit DD in the affirmative defense to plaintiff's complaint set up by P. M. Jackson, Trustee, and filed in said Los Angeles court in his proceedings there, the Trustee, alleges: "that the said plaintiff herein filed in the bankruptcy proceedings then pending in the United States District Court, Southern District of California, Central Division, entitled: In the matter of the Golden State Gem Company of California, a corporation, Bankrupt, his verified claim and demand for payment to him of $30,250.00 for the raw gems, sapphires and all stones mentioned in his complaint herein, and which he had sold and delivered to the Golden State Gem Company of Nevada" and the Trustee sets up the same allegations with regard to that claim and the filing thereof as are set up in the objector's charges as fraud and at page 270 of objector's Exhibit DD in his proposed answer P. M. Jackson, Trustee sets up the so-called "Mrs. Loller case," which is another allegation in the objections before the Referee.

As we have heretofore shown, the affidavits and proposed answers filed by Leonard J. Woodruff and the trustee, before the Los Angeles trial court upon which their proceedings were based appearing before this court in objectors Exhibit DD, likewise clearly set up all of these allegations which form a part of the charges before

the referee including those excepted in the majority opinion. We submit there is nothing contained in the charges of the objections before the referee raising any different issue whatever than that tendered before the trial court at Los Angles previously on two different occasions, appearing in the Transcript of said proceedings [objector's Exhibit DD] which was before the Circuit Court of Appeals for the Ninth Circuit in the appeal of both Woodruff and P. M. Jackson, trustee.

In this Honorable Court's majority opinion it states: "It was specifically charged in the objections that the time of the filing of the suit in California and at the time of rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue." Bearing in mind that the judgment was rendered, entered, docketed, endorsed, and filed on March 20, 1939 [Tr. Vol. I, p. 10], and that both P. M. Jackson, trustee and Leonard J. Woodruff in their proceedings at Los Angeles denied under oath all the material allegations contained in the complaint and alleged that same were untrue, which dated to the time of the filing of the suit in California, we submit it is clear that this issue was before the trial court at Los Angeles. We submit also that in the findings of the referee on the "underlying claim" contained in the referee's certificate [Tr. Vol. I, p. 151] none of these charges are supported. This Honorable Court's opinion then refers to the charge "that the judgment was obtained through the perjured testimony given by Heiser," but the charge of objectors with regard thereto is only that M. E. Heiser "*apparently* testified under oath in the District Court at Los Angeles on the 20th day of March 1939." [Tr. Vol. I, p. 122]. We submit that the allegation that Heiser "ap-

parently testified under oath" is not sufficient to create any charge whatever of perjury, and that there is no evidence before the referee or before this court of any testimony on March 20, 1939, or prior thereto, and no such finding by the referee as evidenced by his certificate [Tr. Vol. I, p. 151]. The effect of this court's majority opinion gives substance to a piecemeal trial before the referee of a charge that at the time of filing of the suit in California and at the time of the rendition of the judgment Woodruff was not indebted to Heiser in any amount and that the material allegations contained in the complaint were untrue "notwithstanding that at the proceedings at the trial at Los Angeles appear many instances where under oath this very same issue is raised; and determines to be in issue a charge that the judgment was obtained through the use of perjured testimony given by Heiser," when the charge only alleges that "apparently" certain testimony was given by Heiser without disclosing what the "apparent testimony" may have been. In the findings set forth in the referee's certificate there is clearly no fact set out indicating any perjured testimony through which the judgment was obtained. The majority opinion holds that an allegation of fraud is contained in such a charge. We submit however that these specific charges were contained in the proceeding before the trial court and ruled upon adversely to the trustee and these creditors. Even if not, the charge of "apparently testified" is wholly insufficient to tender the issue or to create grounds of contest, and the findings of the referee contained in his certificate in nowise support any such charge. To send this charge back to the trial court as an issue tendered before the referee under these circumstances surely can do nothing more than prolong this already lengthy procedure of objectors and the bankrupt to defeat the Judgment rendered March 20, 1939.

III.

The Ninth Circuit Unanimously Held That Jackson, Trustee, and Woodruff versus Heiser Was an Independent Equitable Action Attacking the Heiser Judgment for Fraud.

We would respectfully refer this Honorable Court to the opinion in *Jackson v. Heiser, supra*, which may not have been considered on this question: "A claimed ground of appellant's motion of September 26, 1939 (the motion appealed from) was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud." In referring to the charge of Jackson, Trustee, and Woodruff in the lower court, the opinion recites: "The charge that the judgment was obtained by fraud was denied and not proved." It then goes on to state: "that ground of appellant's motion appears to have been abandoned." The abandonment referred to we believe is the charge in the Circuit Court on appeal that the judgment was obtained by fraud in the lower court and was denied. That it was not proved is evident by the decision of the lower court against Jackson, Trustee, and Woodruff, which was in effect a judgment against Jackson, Trustee, and Woodruff in all of the issues raised before it. The effect of the opinion of the District Court against Jackson, Trustee, and Woodruff must necessarily be on all issues raised by them and that on all issues raised by them the charge was not proved. This is elementary. Furthermore, the proceeding in the lower court was by motion. Rule 12 of the Rules of Civil Procedure provides: "A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this

rule and does not include herein all objections then available to him which this rule says are to be raised by him, he shall not thereafter make a motion based upon any defenses or objections so submitted, except that prior to making any other motions under this rule he may make a motion under which are joined all the defenses numbered 1 to 5 in sub-division (b) of this rule, which he cares to assert." This is of course in furtherance of the elementary rule of *res adjudicata* not only as to those matters which were decided, but also as to all matters which could have been presented for decision. *Chico Dist. v. Bank*, 308 U. S. 371, 378; *Moffett v. Robbins*, 81 Fed. (2d) 431.

In the unanimous opinion of the Ninth Circuit Court on the trustee's appeal the opinion shows on its face that its opinion that the order of September 26, 1939, determining the proceedings filed in behalf of the trustee was a final decision and therefore was appealable, was based on the case of *Stevirmac v. Ditman*, 245 U. S. 210, 214, 216, and *Rust v. United Water Works Co.*, 8 Cir. 70 F. 129, 132, both of which cases were cited by the trustee in his behalf on appeal to give the Circuit Court jurisdiction and accepted by the opinion of the court. The *Stevirmac* case decides that where in a separate and distinct proceeding it was attempted to set aside a judgment "because of collusion and fraud charged in the institution and conduct of the prior litigation and in the procurement of the decree, it is reviewable." In the *Rust* case the proceeding filed by the receiver alleged "that the judgment was obtained by collusion, in fraud of the rights of the corporation." The gravamen of the proceedings in those cases was *fraud* in the institution and conduct of the prior litigation and the procurement of the decree in respect of which relief was sought, for which reason it was held that irrespective of

what the proceeding may be if it was on the ground of *fraud* it was a distinct proceeding and therefore appealable because in effect it is a separate proceeding and the decision final. Thus we have a situation where the original judgment in the *Heiser v. Woodruff* case at Los Angeles became final March 20, 1939; the default had been entered February 23, 1939, more than six months had gone by from the date of entry of the default and from the date of entry of the judgment when the trustee, in behalf of the creditors and the bankrupt Woodruff, commenced the proceedings which the Ninth Circuit Court held was in effect an independent proceeding, and they were entitled to a review of the order denying them equitable relief.

Woodruff must have considered this a separate proceeding as he mentioned nothing about his previous attempts beginning on March 27, 1939, to set aside this default and ending with a denial of relief in the order of June 8, 1939. The order of the Los Angeles Court of June 8, 1939 [Tr. Vol. I. p. 263] stipulated to by Heiser and Woodruff, closes with the following statement by the court: "It is the intent and purpose of this order that such competent evidence as either party desire to present be received by the said court at said hearing and considered by it in determining the actual value of the property which plaintiff alleges was converted by the defendants." [Tr. Vol. I. p. 265.] After this protracted trial before the Los Angeles court, attended by Attorneys Ames Petersen, Edward Fitzpatrick and Robert Beveridge for Woodruff, all well-known trial lawyers of Los Angeles at the time, with many witnesses presented in behalf of defendant Woodruff, and most of the exhibits which were also presented to the referee and will show the Los Angeles court's Exhibit File mark thereon, the Los Angeles court

found that the value of the material was not less than the value stated in the judgment and he refused to lower the amount of the judgment which the parties had given him the right to do if after the hearing he found the value to be less than the amount stated in the judgment. At the trial of those proceedings the court permitted all of the witnesses to examine the property that was at the warehouse, in front of all of the attorneys, and samples were brought into court and testimony had by both sides and many disinterested persons qualified before the court as experts.

Conclusion.

In conclusion, we submit to this Honorable Court that it is evident from the majority opinion herein that all of the foregoing situations indicated by the record may not have been considered, and particularly the Objector's Exhibit DD, being the transcript of the proceedings on appeal before the Ninth Circuit Court upon which it rendered its unanimous opinion. From this record we submit it is clear that the question of fraud, with all of its involvements and angles presented before the referee by the Woodruff family creditors' objections, were before that Court and that it would be grossly unfair and unjust in view of this record and of the findings of the referee on the "underlying claim" [Tr. Vol. I, p. 151] which form a part of the Referee's Certificate of Review, to have the bankruptcy trial court render a further opinion based on these findings, which would again come up before this Court with a lengthy record and thus force Appellee M. E. Heiser to continue on and on with this litigation by piecemeal and otherwise, and at great expense.

The injustice and inequity of this situation is further enhanced by the unusual facts. The objectors tendering the issue before the referee are all the family creditors and the bankrupt. They were all in the original Los Angeles proceedings and most of them testified there. They were the petitioners before the referee, asking that the trustee go to California to test out the validity of this claim where if successful they would have defeated the "underlying claim" of Heiser. When they lost in the proceedings before the trial court there they were the petitioning creditors again who went back to the referee and obtained authority for appeal by the trustee in their behalf. It was in their behalf that the trustee made his affidavit before the Los Angeles court in his proceedings there, that there was nothing left for the creditors to do to defeat the claim of Heiser if the Court refused to grant them relief. This averment no doubt greatly impressed the Los Angeles court and these creditors, through the trustee, were given greater consideration because thereof. And Woodruff, the bankrupt, joined the trustee in all of these proceedings. Having taken that position the majority opinion of this Honorable Court now in effect changes the accepted rule and would allow the family creditors and bankrupt Woodruff to again retry the same issues before the referee or to theorize that they did not have to make their full stand before the Los Angeles court in what in effect was an independent proceeding there, but the family creditors and bankrupt Woodruff could withhold some little pieces of fraud from the issues of fraud they tendered there and if they lost in California, as they did, then they could once again try out these morsels before the referee in another protracted hearing costly to Heiser and continue this procedure *ad infinitum*.

In the memorandum opinion of Judge Rice [Tr. Vol. I. p. 155] he says: "It is my conclusion that the action of the California court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankrupcty in this court. the chief controversy in this proceeding has centered on the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above." Appellee Heiser has been confronted before the referee with the filing of numerous claims of the family all stalemated with the claim of the wife of the bankrupt, Willie Mae Woodruff, allowed by the referee in the total amount of over $800,000.00, which has been reduced by Judge Rice on review by Heiser to only $18,000.00. Is this not of itself an outstanding color in the picture confronting Heiser in his attempts to end litigation? Which we submit should have been finally closed by the unanimous opinion of the United States Circuit Court of Appeals for the Ninth Circuit. Surely the bankruptcy courts cannot be used by a bankrupt and his family for the purposes resulting from this Honorable Court's majority opinion.

We pray this Honorable Court, in the interests of justice, to grant Appellee Heiser a rehearing before this Court in this matter, that this Honorable Court may examine Objector's Exhibit DD, the transcript of the record of the proceedings in the Los Angeles court upon which the appeal was taken by the trustee and the matters to which we respectfully refer the Court in this petition. Particularly is this important in fairness to the Appellee because of the reference in the majority opinion on page 5, "but the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material alle-

gations in the complaint were knowingly false, etc." True, the opinion in *Jackson v. Heiser, supra*, does not indicate the nature of the fraud except that it was in issue, denied and not proved and apparently abandoned. However, at the end of the decision appears further reference to the fraud issue and we submit that the record before this Honorable Court in this Objector's Exhibit DD does contain a showing fully of the identical issues of fraud tendered before the Los Angeles court that were tendered before the referee. We also submit that the Certificate of the Referee on Review [Tr. Vol. I, p. 151] does contain the findings of fact by the trial court, which was the referee, which are fully embodied therein under the heading "Underlying Claim."

The position of the creditors, which are the family of the bankrupt as shown by the record before this Court, is to swell the amount of their claims as high as possible to defeat the amount which would be distributed to Heiser in the event they could not again, for the fourth time, retry the issues of fraud tendered, or that were available to them to be tendered, in the litigation had at the expense of the estate in California on orders of the referee based on their petition therefore is not well taken in equity.

Respectfully submitted,

LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
Attorneys for Petitioner.

Certificate of Counsel.

I do hereby certify that, in my judgment, the foregoing petition for rehearing is well founded and I do further certify that said petition is not interposed for the purpose of delay.

LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
Counsel for Petitioner.

FILED
AUG 30 1945
Robert B Cartwright
CLERK

APPENDIX.

Opinion of the United States Circuit Court of Appeals for the Tenth Circuit.

No. 3052—May Term, 1945.

Willie Mae Woodruff; Howard L. Woodruff; Marguerite Woodruff; Leonard Woodruff, Jr.; Ida Belle Woodruff; and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

[August 11, 1945.]

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before PHILLIPS, BRATTON and HUXMAN, Circuit Judges.

BRATTON, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management

in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant Woodruff failed to answer or otherwise plead in the case; plaintiff submitted evidence; and on March 20, 1939, the court entered judgment against such defendant for $164,000, together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors filed objections to the claim of Heiser; and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal step as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit

Woodruff to answer, and permit the trustee to intervene. The court denied the motion, Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The referee later heard evidence and disallowed the claim in toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted *res judicata* of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U. S. C. A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act; and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state; its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, or the subordination of claims to other claims. Pepper v. Litton, 308 U. S. 295; Prudence Realization Corp. v. Geist, 316 U. S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an al

leged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from a simple contract debt, or an unliquidated claim, into a judgment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection. Pepper v. Litton, supra. And in the absence of a well grounded plea of *res judicata*, the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real debt of the bankrupt. Pepper v. Litton, supra.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Heiser expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him con-

stitutes *res judicata* here to the extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, supra.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment, Woodruff was not indebted to Heiser in any amount, that the material allegations contained in the complaint were untrue, that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Heiser to vacate the judgment, in the action by the trustee and the defendant Heiser to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, supra. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, supra, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions in accordance with Rule of Civil Procedure 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310, Kelley v. Everglades Drainage District, 319 U. S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

HUXMAN, Circuit Judge, Dissenting.

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is res judicata.

It is of course well settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment.

but when the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels, and by the use of perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment, and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on July 20, 1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud . . . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original judgment by the use of false and fraudulent testi-

mony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious, false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to introduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. 2d 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal. Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which

would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is res judicata not only as to those matters which were decided, but also as to all matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U. S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

A true copy.

Attest:

Clerk U. S. Circuit Court of Appeals, Tenth Circuit.

Order Denying Petition for Rehearing.

First Day, September Term, Tuesday, September 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Order Staying Mandate.

Fourth Day, September Term, Friday, September 7th, A. D. 1945. Before Honorable Orie L. Phillips, Circuit Judge.

This cause came on to be heard on the motion of appellee for a stay of the mandate herein.

On consideration whereof, it is now here ordered that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the designated transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and full, true, and complete copies of certain

pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 3052, wherein Willie Mae Woodruff et al. were appellants, and M. E. Heiser was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 13th day of September, A. D. 1946.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 17, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. [illegible]

M. E. HEISER,

Petitioner,

vs.

WILLIS MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD WOODRUFF, JR., IDA BELLE WOODRUFF and LEONARD L. WOODRUFF,

Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, for the Tenth Circuit, and Brief in Support Thereof.

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Counsel for Petitioner.

ROBERT B. TURNBULL,
G. GIBSON,
Of Counsel.

SUBJECT INDEX

PAGE

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, for the Tenth Circuit, and Brief in Support Thereof 1

Opinion below 2

Jurisdiction 2

Questions presented 3

Point I 3

Point II 4

Point III 4

Point IV 4

Point V 5

Point VI 5

Point VII 5

Point VIII 6

Point IX 6

Summary statement of matters involved 7

Reasons relied upon for issuance of writ 9

Specifications of errors 11

Brief in Support of Petition for Writ of Certiorari 13

I.

Summary of argument 13

II.

Argument 14

Res judicata 14

The Noble case 15

PAGE

B. The judgment of the Ninth Circuit Court against the trustee in bankruptcy affirming the judgment of the U. S. District Court at Los Angeles was res judicata as to all matters actually litigated or which might have been litigated therein 17

C. Intrinsic and extrinsic fraud 18

D. Full faith and credit 21

E. The attack by the creditors through the trustee in bankruptcy upon the final judgment of Heiser against Woodruff, the bankrupt, was a collateral attack 22

F. The trustee represents all creditors and they are bound by his action and the judgment against him 23

G. A final judgment cannot be attacked for alleged perjury in its procurement 24

Conclusion 27

Appendix:

Opinion of Tenth Circuit in Case No. 3052 ..... App. p. 1

Opinion of Ninth Circuit in Case No. 9356 ..... App. p. 11

Opinion of Judge Rice, United States District Court, in Case No. 7623 ..... App. p. 16

Referee's certificate on review ..... App. p. 25

TABLE OF AUTHORITIES CITED

CASES.	PAGE
Beebe v. O'Reilly, 124 Fed. (2d) 750	15
Beneficial Loan Co. v. Noble, 129 Fed. (2d) 425	15, 27
Brady et al. v. Beams et al., 132 Fed. (2d) 985	15
Bryan v. Hamrick, 102 Fed. (2d) 145	15
Cherokee Public Service Co., In re, 94 Fed. (2d) 536	27
Chicot Co. v. Baxter State Bank, 308 U. S. 371	22, 27
Coopdge v. Clinton, 72 Fed. (2d) 531	21
Cromwell v. Sac. Co., 94 U. S. 351	22
Fischer v. Pauline Oil Co., 60 Sup. Ct. 535	23
Grubb v. Public Utilities Comm., 261 U. S. 470	22, 27
Hart Steel Co. v. RR Supply, 244 U. S. 294	15
Jackson v. Heiser, 111 Fed. (2d) 310	19, 27
Jackson v. Irving Trust Co., 310 U. S. 621, 85 L. Ed. 10	27
Lewensohn, In re, 121 Fed. 539	23
Moffett v. Robbins, 81 Fed. (2d) 431	17, 27
Northwestern Pac. Railroad v. Slaught, 205 U. S. 122, 27 S. Ct. 442, 51 L. Ed. 738	23
Paramount Public Corp., Re, 85 Fed. (2d) 42	20
Pepper v. Litton, 308 U. S. 295	10, 12, 15
Picot v. Cohn, 91 Cal. 129, 25 Pac. 970	18, 25
Reuping, Fred., etc. v. Fort Green Nat'l Bank, 102 Fed. (2d) 373	23
Root v. Woolworth, 150 U. S. 401; 37 L. Ed. 1123, 14 S. Ct. 136	20
Stoll v. Gottlieb, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104	15
Sun Indemnity v. United States, 91 Fed. (2d) 120	15
Titus v. Wallick, 306 U. S. 282	21, 27

PAGE

United States v. Throckmorton, 98 U. S. 61, 25 L. Ed. 93 ..... 18, 25

United States v. U. S. Fidelity & Guaranty Co., 106 Fed. (2d) 804 15

Werlein v. New Orleans, 177 U. S. 390, 20 Sup. Ct. 682, 44 L. Ed. 871 17

STATUTES.

Judicial Code, Sec. 240 (28 U. S. C. A. 347, and Act of Feb. 13, 1925, Chap. 229, 43 Stat. 9365, Sec. 240A) 2

Rules for the Supreme Court of the United States, Rule 5(b) 2

TEXTBOOKS.

31 American Jurisprudence, p. 223, para. 655 20

31 American Jurisprudence, p. 230, para. 64 20

2 Freeman on Judgments, 5th Ed., pp. 1437, 1438 17

3 Freeman on Judgments, 5th Ed., p. 2567 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. ..... 1 .....

M. E. HEISER,

Petitioner

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, LEONARD WOODRUFF, JR., IDA BELLE WOODRUFF and LEONARD J. WOODRUFF,

Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, for the Tenth Circuit, and Brief in Support Thereof.

To the Honorable Chief Justice and to the Associate Justices of the Supreme Court of the United States:

The petitioner M. E. Heiser respectfully prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the Tenth Circuit in that certain cause therein entitled "Willie Mae Woodruff, Howard L. Woodruff, Margueritte Woodruff, Leonard J. Woodruff, Jr.; Ida Belle Woodruff, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee," being therein No. 3052. Said judgment was entered by said Circuit Court of Appeals on August 11, 1945 [R. Vol. II, p. 1246].

The decision is not unanimous, but contains an independent and dissenting opinion. A petition for rehearing was filed by M. E. Heiser within the time allowed therefor by rule of court and is copied in the record herein [Vol. II. p. 1253] and an order denying said petition for rehearing was filed on September 4, 1945 [R. App. p. 1303].

Opinion Below.

The majority opinion of the Circuit Court of Appeals for the Tenth Circuit in this cause is set forth in full in Record, Appendix page 1293, and is copied at length in the Appendix to this petition at pp. 1-10. There is also included in both references the dissenting opinion.

Jurisdiction.

The jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended in 28 U. S. C. A. 347, and Act of Feb. 13, 1925, Chap. 229, 43 Stat. 9365. Sec. 240A, amended May 22, 1939. This petition for writ of certiorari is filed within three months after the filing of said opinion and judgment (August 11, 1945) and the denial of the petition for rehearing (September 4, 1945). This application for writ is presented October 5, 1945, and is made pursuant to paragraph 5(b) of Rule 38 of the rules of this court and in particular the part thereof which suggests that a writ of certiorari may be issued where a Circuit Court of Appeals has rendered a decision in conflict with a decision of another court of appeals on the same matter, and has decided an important

question of local law in a way in conflict with applicable local decisions and has decided an important question of federal law which has not been but should be settled by this court and has so far departed from the accepted and usual course of jurisdictional proceedings and/or so far sanctioned such a departure by the lower court, as to call for an exercise of this court's power of supervision.

The cause sought to be reviewed herein involves the decision of an important question of *res judicata*; the opinion of the said Court of Appeals for the Tenth Circuit herein sought to be reviewed is in direct conflict with an opinion on the same subject made between the same parties theretofore rendered by the Circuit Court of Appeals in the Ninth Circuit. [Opinion, R. Vol. I, p. 291 and copied at length in the Appendix hereto at pp. 1-10.] The decision of the Ninth Circuit Court [R. Vol. I, p. 291] is unanimous and is also copied at length in the Appendix hereto [pp. 11-15]. The decision of the Tenth Circuit Court is a two to one decision [R. Vol. II, App. p. 1239] also Appendix hereto [pp. 16-22]; the dissenting justice writing a separate opinion [R. Vol. II, App. p. 1243] also Appendix hereto [pp. 6-10].

Questions Presented.

Point I.

Does a final judgment of the Ninth Circuit Court of Appeals against a trustee in bankruptcy and the bankrupt have "full faith and credit" in the United States District Court of Oklahoma, or can the same subject matter of such final judgment be relitigated on its merits by the referee in bankruptcy?

Point II.

Is a final judgment of the Ninth Circuit Court of Appeals which held that an independent equity action brought by trustee in bankruptcy from Oklahoma, seeking to set aside a final judgment of the United States District Court of California for alleged fraud in its procurement, is without merit and which affirmed the judgment attacked, *res judicata* of that subject and binding upon the United States District Court of Oklahoma, in the presence of a well grounded plea of *res judicata,* to prevent the retrial of the same issues before the Oklahoma referee in bankruptcy.

Point III.

In the presence of a well grounded plea of *res judicata* may a referee in bankruptcy, under guise of "examining the underlying claim," ignore the rules of *res judicata*—estoppel by judgment and full faith and credit—and by a trial of the merits reverse a final judgment of, (1) a United States District Court; (2) a final judgment of the United States Circuit Court of Appeals—both rendered on the identical subject matters, to-wit: fraud and perjury alleged in the procurement of the judgment?

Point IV.

May creditors in bankruptcy, by their trustees, select a California forum, for the determination by litigation of questions of fraud, etc., alleged to be used in procuring a final judgment against the bankrupt, and after adverse final decisions in the United States District Court of California and of the Ninth Circuit Court of Appeals, thereafter require the Oklahoma referee to again try the

same issues on their merits, or are they bound by the rules of *res judicata*, when presented by a well grounded plea?

POINT V.

May a trustee in bankruptcy in Oklahoma (and his bankrupt) acting under written order expressly instructing the trustee so to do, select the California federal courts, both District and Ninth Circuit, as the forum to litigate the questions of intrinsic and extrinsic fraud as grounds to set aside a final judgment of the California court, and after suffering adverse decisions in both courts then relitigate intrinsic fraud before the Oklahoma referee and thus allow the referee the opportunity to reverse the said final decision of the United States District Court and the Ninth Circuit Court of Appeals?

POINT VI.

Is it the intent and purpose of the Bankruptcy Act to afford a means (without charging extrinsic fraud) whereby a bankrupt and/or his creditors may use the Act to accomplish a result, the subject matter of which had proceeded to final judgment against the bankrupt prior to bankruptcy, and thereafter against the trustee in bankruptcy in courts having jurisdiction thereof, and concerning which no other or different result could have been accomplished without the use of the Bankruptcy Act?

POINT VII.

Is a final judgment of the United States District Court for Southern California against the trustee in bankruptcy, in an independent action filed by him to test the validity of a judgment theretofore rendered by the same court against the bankrupt prior to bankruptcy, *res judicata* as to all

matters placed in issue by the trustee or litigated therein, and which may or could have been litigated by the trustee therein?

POINT VIII.

Is not a trustee in bankruptcy as a litigant attacking for fraud the validity of a judgment in an independent action or proceeding in the United States District Court, bound to then present and prove every available ground of fraud of which he has knowledge or belief, or having charged fraud in such action, which was denied and not proved, can he "apparently" abandon the charges that the material allegations in the original complaint upon which the original judgment was rendered, were knowingly false; that such judgment was secured through the use of perjured testimony given by the plaintiff and that a fraud was thus committed upon the court, and then after his independent action was determined against him by the court which rendered the original judgment and that judgment affirmed on his appeal to the Circuit Court, can these same charges of intrinsic fraud in obtaining the original judgment again be subsequently litigated before the referee?

POINT IX.

Are findings of a United States District Court on a Writ of Review from an order of a referee disallowing a claim based upon a final judgment of the United States District Court, necessary, where the findings of the referee contained in his certificate on review are before the Circuit Court of Appeals and show that the same issues were theretofore presented by the trustee in bankruptcy in an independent action filed by the trustee before the United States District Court that rendered said final judgment, and that

said action was determined against the trustee, and upon his appeal such determination was affirmed by the Circuit Court of Appeals and a well grounded plea of *res judicata* setting forth said judgment was timely presented to such referee and by him denied?

Summary Statement of Matters Involved

Prior to the Bankruptcy proceeding of Leonard J. Woodruff in Oklahoma, the United States District Court for Southern District of California rendered a judgment of $278,000.00 against Woodruff, in favor of Heiser. Evidence was taken before the judgment was given. After the entry Woodruff appeared and moved to vacate the judgment on the ground (among others) that it had been procured by perjury as to values of the gems the Court found he had defrauded Heiser of. Woodruff without waiving his right to appeal stipulated [R. Vol. I. p. 263] with Plaintiff Heiser that the court should hear evidence to determine if the values alleged in the complaint were right or wrong—Over 10 days of trial evidence was offered. When matter was submitted trial court found values were as represented and refused to set aside judgment. The judgment became final. Woodruff thereafter filed voluntary Bankruptcy petition in Oklahoma and was adjudicated. A Trustee was elected by creditors—All creditors (excepting Heiser) filed written petition alleging California judgment was obtained by fraud and perjury, asking Referee in Oklahoma to authorize and instruct Trustee to go to California and attack the judgment [R. Vol. I. p. 20]. Trustee Jackson also in a separate petition asked the same authority [R. Vol. I. p. 21]. On these petitions the Referee ordered such action taken [R. Vol. I. p. 28]. The Trustee Jackson joined by Bankrupt Woodruff then filed in the California District Court alleging fraud

in the procurement of the judgment, perjury as to the values of the gems converted by Woodruff and many other grounds. The District Court heard and denied the relief. Trustee Jackson and Bankrupt Woodruff appealed to United States Ninth Circuit Court of Appeals, at San Francisco, California. The decision of that court is found in Appendix hereto and in the ~~[~~R. Vol. I. p. 291~~]~~, its citation is ~~[~~111 F. (2d) 310~~]~~ The Ninth Circuit decided against Trustee Jackson and Woodruff in every respect. The judgment became final.

After the judgment so became final, the same identical charges, in the same words and identical worded phrases were filed as objections to the allowance of the Heiser judgment as a filed claim before the Oklahoma Referee.

Heiser answered the objections by pleading, *res judicata* by reason of the California Federal Court decisions; estoppel by judgments, and "full faith and credit."

While the Referee ignored these defenses, and retried the matter on its merits, the judgment creditor refused to rely on the merits and stood on his final judgments. On a review of the Referee's findings the District Court of Eastern Oklahoma, reversed the Referee. That decision on the "claim of Heiser" is best stated by Judge Rice himself in his findings and opinion [R. Vol. I. p. 156, also in Appendix hereto] reading: ~~[Copy from Vol. I. p. 156 heading "Claim of Heiser thru p. 157 to end of" on p. 158].~~ (Here ~~quote only~~ see "Claim of Heiser" portion of Judge Rice decision ~~from our~~ at p. 17 et seq. of Appendix hereto. ~~already set up or from Record.)~~

From that decision an appeal was taken by Bankrupt, and certain family creditors. The Tenth Circuit does not agree with the District Court, and by the 2 to 1 decision lays down the law of the case.

While sending the case back to the District Court for findings it never the less may constitute the law of the case and this review is absolutely necessary to protect petitioners California judgments.

Further essential facts of the case are stated in the opinions and decisions attached to this petition as an appendix, and in the interest of brevity are not repeated.

Reasons Relied Upon for Issuance of Writ.

The reasons relied upon briefly stated are:

1. The Ninth Circuit has held that the action of the Oklahoma Trustee in Bankruptcy in attacking the California Judgment in California constituted an independent equitable action to set aside the judgment on the alleged and pleaded grounds that it was obtained by fraud practiced on the court and perjury of witnesses. That action was decided adversely to the contentions of the Trustee and Bankrupt. The decision became final. (Citation of case, 111 F. (2d) 310.)

A litigant may not plead all his grounds and try part only, may not reserve to himself part for future litigation. That is *res judicata* of that which was decided or could have been decided in that action. The dissenting opinion of Justice Huxman, points out the law and decision in this regard [R. Vol. II. p. 1243] (Also in Appendix hereto p. 6).

2. The question of fraud in the procurement of the California judgment has already been twice decided adversely to Bankrupt and his Trustee before the Referee in Bankruptcy, attempted to retry it. Justice Huxman, states our position in his dissent in the Third paragraph thereof. [App. p. 6.] ~~(Suggest we quote that paragraph which goes over on the next entire page—in its entirety.)~~ et seq

3. The majority decision if allowed to be the law of the case permits a Referee to allow a Trustee to select a forum and raise all points involved and when the final decisions are adverse to the Bankruptcy Trustee, and Estate, to then ignore the final decisions and reverse the United States District Court for Southern California, and reverse the Ninth Circuit Court of Appeals.

4. The majority decision if it is permitted to stand without review here establishes that even when well grounded and pleaded the defenses of "full faith and credit," "estoppel by judgment", and "res adjudicata" may be ignored by a Referee in Bankruptcy.

5. The majority decision of the Tenth Circuit places an extended construction on *Pepper v. Litton*, 308 U. S. 295, and wrongfully holds that under that decision a Referee in Bankruptcy may under the guise of "examining the underlying claim" retry the merits of a judgment final in its scope both to "debt" and "fraud and perjury used in its procurement."

6. The Bankrupt attacked the judgment after its rendition and before Bankruptcy—the trial District Court in Southern California permitted evidence to be taken over 10 trial days to determine if he had given a judgment by being deceived as to values—After the 10 day hearing the court held that he would not disturb the judgment, that he had not been imposed on and that the values shown were the same as shown to him on the rendering of the judgment. He refused to set it aside and so ordered.

After Bankruptcy—the Trustee and the Bankrupt jointly again attacked the judgment—this time under express written orders of the Referee in Oklahoma. The decisions in both California Federal Courts being again adverse to Trustee and Bankrupt—became final.

Specifications of Errors.

The Circuit Court of Appeals erred:

(1) In holding that a final judgment of the Ninth Circuit between the same parties on same subject matter was not *res adjudicata* as to specific frauds alleged but not proven by losing party.

(2) In holding that a Referee in Bankruptcy may reverse the final judgment of the Ninth Circuit Court rendered against his Trustee in Bankruptcy on questions of intrinsic fraud and perjury alleged to have been perpetrated in the procurement of said judgment.

(3) In holding that after a Trustee in Bankruptcy has selected a forum to try his contentions that a given creditors judgment had been procured by fraud and perjury and had suffered adverse final judgments against him on these subjects in said court, the Ninth Circuit, that the Referee in Bankruptcy could again relitigate same subjects and reverse final judgment of Ninth Circuit.

(4) In holding that after litigants (Trustee and Bankrupt) has expressly attacked a final judgment for alleged fraud and perjury in its procurement that they could abandon one or more grounds, leave them for future litigation, and not be bound by the rule of *res adjudicata* or estoppel by judgment when the decision went against the litigating Trustee and Bankrupt and in favor of the judgment creditor.

(5) In holding that the decision of the Ninth Circuit holding that the proceeding before it was an independent equity action attacking a final judgment for fraud in its procurement and that there was no fraud proven or found is not entitled to "full faith and credit" in the District Courts of the Tenth Circuit.

6. In holding that *Pepper v. Letton*, is authority for a Referee in Bankruptcy to ignore a final judgment as *res adjudicata*—when validity of judgment has been attacked unsuccessfully by the Trustee in Bankruptcy on alleged grounds of fraud in its procurement.

Petitioner respectfully represents that said questions properly appear in the record and were raised before the trial Court (Referee) and the United States District Court (on Writ of Review), and in the Circuit Court of Appeals.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari issue out of and under the Seal of this Honorable Court directed to the Circuit Court of Appeals for the Tenth Circuit, requiring said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said Circuit Court of Appeals in the case therein numbered 3052, and entitled "Willie Mae Woodruff, Howard Woodruff, Margueritte Woodruff, Leonard Woodruff, Jr., Ida Belle Woodruff, and Leonard Woodruff, Appellants v. M. E. Heiser, Appellee," to be reviewed and determined by this Honorable Court, as provided by law; that the judgment of said Circuit Court of Appeals herein be reversed by this Honorable Court, and for such further relief as to this Court may seem proper and just in the premises.

[Dated Oct. 1, 1945.]

LEONARD J. MEYBERG,
Counsel for Petitioner.

RUPERT B. TURNBULL,
T. G. GIBSON,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. .....

M. E. HEISER,

Petitioner

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, LEONARD WOODRUFF, JR., IDA BELLE WOODRUFF and LEONARD J. WOODRUFF,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

SUMMARY OF ARGUMENT.

A. RES JUDICATA.

B. THE JUDGMENT OF THE NINTH CIRCUIT COURT AGAINST THE TRUSTEE IN BANKRUPTCY AFFIRMING THE JUDGMENT OF THE U. S. DISTRICT COURT AT LOS ANGELES WAS RES JUDICATA AS TO ALL MATTERS ACTUALLY LITIGATED OR WHICH MIGHT HAVE BEEN LITIGATED THEREIN.

C. INTRINSIC AND EXTRINSIC FRAUD.

D. FULL FAITH AND CREDIT.

E. THE ATTACK BY THE CREDITORS THROUGH THE TRUSTEE IN BANKRUPTCY UPON THE FINAL JUDGMENT OF HEISER AGAINST WOODRUFF, THE BANKRUPT, WAS A COLLATERAL ATTACK.

F. THE TRUSTEE REPRESENTS ALL CREDITORS AND THEY ARE BOUND BY HIS ACTION AND THE JUDGMENT AGAINST HIM.

G. A FINAL JUDGMENT CANNOT BE ATTACKED FOR ALLEGED PERJURY IN ITS PROCUREMENT.

II.
ARGUMENT.

A. Res Judicata.

On the question of *res judicata* we submit that the opinion of the Honorable Judge Eugene Rice of the District Court on review of the referee's findings which we have set out in full in the STATEMENT OF MATTERS INVOLVED, and which is also included in the Appendix hereto and is in the Record, Volume I at Pages 156, 157 and 158, clearly states the sound rule of law announced by this Honorable Court applying to the facts in this case. The same is true of the dissenting opinion of the Honorable Judge Huxman of the Circuit Court appearing in the Appendix hereto at page 6, and also in the Record Pages 1243-1246. We adopt the citations and quotations from the decisions set out in these opinions on the subject of *res judicata* and we submit, as to the intrinsic fraud, these rules of law apply in bankruptcy courts as well as all courts of equity. The doctrine of *res judicata* is not a technical defense. It is a rule of fundamental

and substantial justice of public policy and of peace and must be enforced by the courts. (*Hart Steel Co. v. RR Supply*, 244 U. S. 294, 299; *Sun Indemnity v. U. S.*, 91 Fed. (2d) 120, 121; *U. S. v. U. S. Fidelity & Guaranty Co.*, 106 Fed. (2d) 804, 809; *Bryan v. Hamrick*, 102 Fed. (2d) 145, 152.)

THE NOBLE CASE.

The Tenth Circuit Court in *Beneficial Loan Co. v. Noble*, 129 Fed. (2d) 425, reversing the District Court, which permitted an attack on the final judgment of a Colorado State Court, after discussing the case of *Pepper v. Litton*, 308 U. S. 295, said:

> "Here, however, the bankruptcy court did not undertake to exercise its jurisdiction with respect to the allowance, rejection, or subordination of a claim, but undertook to inquire into the merits of the cause of action . . . that is to say, it undertook to relitigate the matters which had been held and determined by the state court. This, we think, it was precluded from doing under the doctrine of *res judicata*."

In this case the court cited *Beebe v. O'Reilly*, 124 Fed. (2d) 750, which was decided on the authority of *Stoll v. Gottlieb*, 305 U. S. 165 (59 S. Ct. 134, 83 L. Ed. 104). The Tenth Circuit in a unanimous opinion written by Hon. Justice Bratton in *Brady et al. v. Beams et al.*, 132 F. (2d) 985; says, "A federal court sitting in equity may vacate a judgment for extrinsic or collateral fraud but not for fraud which was in issue ~~not~~ in former suits."

In the majority opinion in the case at bar the Tenth Circuit now holds in defiance, we submit, of its own decisions and of the accepted decisions of every other Circuit, that notwithstanding that the trustee in bankruptcy has in an independent action in the District Court at Los Angeles tested the validity of the original judgment and suffered judgment against him, and on the trustee's appeal to the Ninth Circuit it was held that the judgment was valid, the same creditors, upon whose application the referee ordered the trustee to take those proceedings, may now relitigate not only the matters which had been heard and determined by the District Court in Los Angeles at the time of the rendition of the original judgment and the proceedings subsequent thereto by the bankrupt, but this notwithstanding the judgment against the trustee in the District Court in his attack on this judgment in an independent action and the judgment of the Ninth Circuit Court of Appeals against him upon his appeal therefrom. After all these proceedings and these judgments the Tenth Circuit Court now holds that subsequent thereto these same creditors may again relitigate before the referee the charges of these creditors of intrinsic fraud, that "the contention of the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud was thus committed on the court and the parties."

B. The Judgment of the Ninth Circuit Court Against the Trustee in Bankruptcy Affirming the Judgment of the U. S. District Court at Los Angeles Was Res Judicata as to All Matters Actually Litigated or Which Might Have Been Litigated Therein.

The case of *Moffett v. Robbins*, 81 Fed. (2d) 431, is a decision of the United States Circuit Court written by Honorable Justice Bratton who also wrote the majority opinion in the case at bar. Therein he sets forth the rule of law which we submit is prevalent throughout all the circuits of the United States Courts but which he reverses in the case at bar. In that case it was held that a judgment rendered by a court having jurisdiction is conclusive upon the parties and their privies in a subsequent action on the same cause of action as to all matters actually litigated or which might have been litigated therein, and this, notwithstanding that the judgment may have been erroneous in fact or in law.

This court in *Werlein v. New Orleans*, 177 U. S. 390, 398, 20 Supreme Court 682, 44 L. Ed. 871, held: "In the National courts an adjudication is conclusive of all questions of both law and fact upon which the rights of the parties depend, of things which might have been determined as well as those which were." The rule is well stated in Freeman on Judgments, 5th Ed., Vol. 11, pages 1437 and 1438: "A single cause of action may have been based on several grounds, in which event, whether actually litigated or not they are all merged in the judgment which bars a new action for the same cause of action though on a different ground from the first."

C. Intrinsic and Extrinsic Fraud.

In the petition for rehearing which is set forth in full with the brief thereon in the Record, Volume II, pages 1253 to 1291, we have briefed fully the causes of intrinsic and extrinsic fraud and the holdings of the Supreme Courts of California and Oklahoma with regard thereto. For the sake of brevity we do not repeat the discussions set out therein except to call this Honorable Court's attention to the fact that the ruling of the Tenth Circuit Court, in the case at bar, permits relitigation before the referee, of charges of intrinsic fraud, namely, "that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser and that a fraud was thus committed on the court and the parties." As we have shown at the beginning from the leading case of *U. S. v. Throckmorton*, 98 U. S. 61, 66, 25 L. Ed. 93, which refers to *Pico v. Cohn*, 91 Cal. 129, 133, 25 Pac. 970, which is the ruling case in California, the Court comments on the distinguishing features of these two types of fraud, concluding that equitable aid will be granted where it appears that "by some fraud practiced by the party securing relief against the judgment or decree, that party has been prevented from presenting all of his case to the court." Freeman on Judgments, Volume III, page 2567, 5th Ed. 25, put the accent on what is perhaps the main distinction between intrinsic and extrinsic fraud: "It must be borne in mind that it is not fraud in the cause of action but fraud in the management which entitles the party to relief."

In permitting the referee to now relitigate the charge "that the material allegations in the complaint were know

ingly false" would be to reopen an issue which was decided first by the original judgment; second, the proceedings of Leonard J. Woodruff, in the Los Angeles bankruptcy court before the bankruptcy proceedings; third, by the proceedings of the trustee in bankruptcy in his independent action before the United States District Court at Los Angeles, and fourth, by the judgment of the Ninth United States Circuit Court, all of which denied relief on this issue. The unanimous opinion of the Ninth Circuit Court against the trustee in bankruptcy and the bankrupt in *Jackson v. Heiser*, 111 Fed. (2d) 310, stated: "that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned."

We submit that the fact that the nature of the fraud referred to does not appear in the Ninth Circuit decision, the charge of fraud referred to, standing alone, is broad enough to cover every possible issue of fraud, not alone extrinsic but also intrinsic. All fraud was thus determined by the final judgments on this charge and cannot again be litigated. We urge that it is contrary to the law of the United States Courts and of the State Courts of California and of Oklahoma, to hold otherwise as set forth in detail in the brief on the petition for rehearing. [Record, Vol. II, p. 1253.] The fraud charged now before the Court is intrinsic fraud and had been theretofore litigated by the bankrupt and creditors through their trustee in bankruptcy in the California courts. The judgments theretofore rendered are *res judicata* and it is contrary to all law that the issue of such intrinsic fraud can now be relitigated by the referee in the presence of a well grounded plea of *res judicata* and a different judgment rendered by the trustee, the effect of which is to reverse the United States District Court at Los Angeles and the

Ninth Circuit Court which has already found against the trustee in bankruptcy on the same issues, in final judgments.

The rule set out in *Root v. Woolworth*, 150 U. S. 401, 37 L. Ed. 1123, 14 S. Ct. 136, is stated in 31 Am. Jur. paragraph 654 at page 230:

> "The acts for which a court of equity will on account of fraud, command relief from a judgment have relation to extrinsic or collateral fraud; intrinsic fraud is not sufficient for equitable relief. Fraud has been regarded as intrinsic within the meaning of this rule where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were, or could have been, litigated therein"

and at paragraph 655 at page 232 of 31 Am. Jur. giving the reasons for the distinction:

> "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that which has been tried and passed on in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable."

We submit this equity rule applies to the equity powers of the bankruptcy court as to a retrial of the issues tendered by the trustee before the Los Angeles Court. We submit that it was held in 85 Fed. (2d) 42, In re *Paramount Public Corp.* and is the general rule that a judgment resulting from litigation at the direction or with the consent of the bankruptcy court is liquidated by such a final judgment, all of which law has been disregarded and reversed by the decision in the case at bar.

D. Full Faith and Credit.

We submit that the referee in bankruptcy was legally bound to give full faith and credit to the judgment of the United States District Court for the Southern District of California against the trustee in bankruptcy and the judgment of the United States Circuit Court of Appeals for the Ninth Circuit against the trustee in bankruptcy.

In the case of *Titus v. Wallick*, 306 U. S. 282 and in *Coolidge v. Clinton*, 72 Fed. (2d) 531, Tenth Circuit, the full faith and credit clause has been judicially defined. In these cases the defeated party claimed that he could collaterally attack a judgment for fraud. The opinion in the Supreme Court by the Honorable Justice Hughes held that the lower court, in permitting such an attack, had done so in full violation of the full faith and credit clause of the United States Constitution. In the case of *Milliken v. Meyer, supra*, the Honorable Justice Douglas stated:

> "The full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or the consistency of the decision, or the validity of the legal principles upon which the judgment is based."

We submit that the referee cannot relitigate the issue of intrinsic fraud as to the charge of falsity of the allegations of the complaint or perjured testimony in obtaining the original judgment of March 20, 1939, but must respect the judgment of the United States District Court at California and the Ninth Circuit Court against the trustee in bankruptcy on his collateral attack wherein he charged both intrinsic and extrinsic fraud in obtaining the original judgment.

E. The Attack by the Creditors Through the Trustee in Bankruptcy Upon the Final Judgment of Heiser Against Woodruff, the Bankrupt, Was a Collateral Attack.

The opinion by Chief Justice Hughes in *Chicot Co. v. Baxter State Bank*, 308 U. S. 371, 378, holds that a judgment is *res judicata* not only as to those matters which were decided but also as to all matters which could have been presented for decision. The opinion of Chief Justice Hughes in that case, wherein he quotes *Grubb v. Public Utilities Comm.*, 261 U. S. 470, and *Cromwell v. Sac. Co.*, 94 U. S. 351, might well be said regarding the view of the majority opinion of the Circuit Court of the Tenth Circuit of the case at bar.

> "Such a view is contrary to the well settled principal that *res judicata* may be pleaded as a bar not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end."

And with regard to collateral attack the opinion states:

> "And determinations of such questions, while open to direct review may not be assailed collaterally."

The opinion of the Tenth Circuit Court in the case at bar now permits another collateral attack to test the validity of this original judgment under a theory of testing the underlying claim, but the grounds are the charge that the material allegations of the original complaint were knowingly false and that the judgment was secured through the use of perjured testimony given by Heiser, thus a collateral attack on the ground of intrinsic fraud, notwithstanding the judgments of the United States Dis-

trict Court at Los Angeles and the Ninth Circuit Court against the trustee in bankruptcy in his independent action instigated there in which he included fraud as a ground of his attack, which was not proved.

F. The Trustee Represents All Creditors and They Are Bound by His Action and the Judgment Against Him.

In the case at bar the objecting creditors all sought and obtained orders requiring the trustee in bankruptcy, P. M. Jackson, to litigate and test the validity of the Heiser judgment in the federal courts of California. [Record of Vol. 1, p. 28.] In *Fischer v. Pauline Oil Co.* 60 Supreme Court, p. 535, this court held:

> "Where a trustee attacks a judgment in the court that rendered it and is unsuccessful he is estopped from setting up the same defense in the bankruptcy court."

In *Fred Reuping, etc. v. Fort Green Nat'l Bank*, 102 Fed. (2d) 373 (3d Cir.), it was held that a "claim, so far as he relies upon bankruptcy trustee to protect the estate against improper claims, is bound by what the trustee does or fails to do." In the foregoing case is cited *In re Levensohn*, 121 Fed. 539, "The trustee reprtsents all the creditors and may therefore be relied upon to present all proper objections to the claims of those whose standing is questionable."

In *Northwestern Pac. Railroad v. Slaught*, 205 U. S. 122, 27 S. Ct. 442, 51 L. Ed. 738, the court found that there was no substantial difference between the allegations previously made and now, but if there be a difference the claim now is one that respondents were required to bring

forward in the prior suit. We submit that it was never the intention of Congress to clothe a bankruptcy court with jurisdiction to reopen judgments and try cases summarily before a referee for intrinsic fraud where a court had already rendered the judgment and such court had jurisdiction of the subject matter and the parties. Of course where the judgment was obtained by fraud or collusion the bankruptcy court would have jurisdiction, but even then it could not reopen the judgment after the trustee in bankruptcy has once proceeded in the court where the judgment was rendered, to have the judgment vacated and set aside in an independent proceeding and was unsuccessful, the creditors cannot again set up the same matter before the bankruptcy court in face of a well grounded plea of *res judicata*.

G. A Final Judgment Cannot Be Attacked for Alleged Perjury in Its Procurement.

Here under the guise of examining the underlying claim before the referee in bankruptcy, after the trustee in bankruptcy representing the creditors has in an independent action collaterally attacked and tested the validity of a judgment on which a claim is based (all upon order of the referee, based upon an application of creditors therefor), and after the trustee in bankruptcy has suffered a final judgment against him, both in the United States District Court where the original judgment was rendered, and in the Circuit Court of Appeals (in all of which proceedings the bankrupt joined with the trustee), and wherein fraud was "charged, denied and not proved," the same creditors cannot thereafter lawfully go before the referee with objections to the claim based upon the original judgment on

the charge "that the material allegations in the complaint (original complaint) were knowingly false; that the judgment was secured through the use of perjured testimony given by the plaintiff and that a fraud was thus committed on the court and the parties." The present Tenth Circuit opinion holds otherwise. This charge has reference to the complaint in the original action on which the original judgment resulted, and to testimony given in that action, all prior to the bankruptcy proceeding and subsequent to the commencement of the independent action by the trustee in both the District Court and the Ninth Circuit Court.

Beginning with *Vico v. Cohn*, 91 Cal. 129, 25 Pac. 970, and through a long line of Federal cases and California and Oklahoma cases, it has been uniformly held that "a showing of fraud practiced at such hearing of the original action will not suffice." This, from the leading opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66; 25 L. Ed. 93, where it is said that equitable aid will be granted where it appears that "by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court"; and at page 584 the opinion states "an examination of the authorities as to what fraud will warrant the aid of equity discloses that only upon proof of extrinsic and collateral fraud can a plaintiff secure equitable relief from a judgment; a showing of fraud practiced at the hearing of the original action will not suffice. This is characterized as intrinsic fraud and since there must be an end to litigation and such fraud was part of the case presented in the former suit, equity will not reopen the matter." Certainly false or perjured testimony or falsity in the allegations of the complaint are intrinsic

fraud, against which a defense may be made at the trial, and these issues were tendered by the charge of fraud in the proceedings had by the trustee in California in both the District Court and the Ninth Circuit Court, wherein he suffered final judgment against him, which we submit is binding upon these creditors. We submit that none of the issues in the contest before the referee, approved by the majority opinion (of the case at bar) namely, "that the material allegations in the complaint were knowingly false" and that the judgment (March 20, 1939) was secured through the use of perjured testimony given by Heiser, included any extrinsic fraud or any assertion thereof, whether measured by the cases cited or otherwise; and that if such fraud had reference to the underlying claim in the circumstances of the case at bar, then the judgment of the District Court at Los Angeles and of the Ninth Circuit Court being final against the trustee and the bankrupt, all subsequent to the date of adjudication, we have a clear case where the bankrupt himself and the present objecting creditors, through the trustee in bankruptcy upon the order of the referee, have instituted the attack in the California court. They have not been prevented from full participation therein and they are precluded from trying these intrinsic fraud issues again at this time before the referee.

Those questions that the trustee in bankruptcy, P. M. Jackson, raised in his proceedings in the California courts, on the order of the referee (or could have raised but failed to present, are waived) cannot be subsequently urged before the referee by the same creditors, upon whose application the referee made his said order to the trustee to take such proceedings. Neither the trustee nor the creditors may present their attack by piecemeal. *Jackson v.*

Irving Trust Co., 310 U. S. p. 621, 85 L. Ed. p. 10; *Titus v. Walleck*, 306 U. S. 282; *Chicot Co. Dist v. Baxter State Bank*, 308 U. S. 371, 378; *Grub v. Public Utility Com.*, 281 U. S. 470, 478, 479; *Moffett v. Robbins*, 81 Fed. (2d) 431; *In re Cherokee Public Service Co.* 94 Fed. (2d) 530; *Beneficial Loan v. Noble*, 129 Fed. (2d) 425.)

Conclusion.

The Tenth Circuit opinion in ruling that the referee can now, in face of this record and a well grounded plea of *res judicata*, hear and determine a fourth time, the charge that the material allegations of the complaint upon which the original judgment was obtained against Woodruff March 20, 1939, were knowingly false, that the said judgment was secured through the use of perjured testimony given by Heiser and that a fraud thus was committed on the court rendering the original judgment because such issues were never expressly adjudicated in favor of Heiser, is contrary to the foregoing ruling cases and the accepted law in all of the Circuits, and in this court, and it is a holding of the Tenth Circuit in conflict with the decision of the Ninth Circuit Court on the same matter in *Jackson, etc. v. Heiser*, 111 Fed. (2d) 310, and constitutes a decision on a most important question of bankruptcy law and equity which should be settled by this court.

We submit that this decision has so far departed from the accepted and usual course of jurisdictional proceedings in courts of bankruptcy before the referee and in equity proceedings, and so far sanctions such departure by the lower courts, as to call for an exercise of this court's power of supervision, and that a final determination of

this question is essential to the orderly and uniform administration of bankruptcy and equity cases.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to reverse the judgment of the Circuit Court of Appeals for the Tenth Circuit in the case at bar should be granted.

Dated: October 5, 1945.

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Counsel for Petitioner

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Of Counsel.

APPENDIX.

(1) Opinion of Tenth Circuit
In Case No. 3052.

(2) Opinion of Ninth Circuit
In Case No. 9356

(3) Opinion of Judge Rice, United States District Court
In Case No. 7623.

(4) Referee's Certificate on Review.

APPENDIX.

Opinion of Tenth Circuit (in Case No. 3052).

United States Circuit Court of Appeals, Tenth Circuit.

Willie Mae Woodruff; Howard L. Woodruff; Marguerite Woodruff; Leonard Woodruff, Jr.; Ida Belle Woodruff; and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 3052—May Term, 1945.

[August 11, 1945.]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before Phillips, Bratton and Huxman, Circuit Judges.

Bratton, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant Woodruff failed to answer

or otherwise plead in the case; plaintiff submitted evidence and on March 20, 1939, the court entered judgment against such defendant for $164,000; together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors, filed objections to the claim of Heiser and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal steps as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit Woodruff to answer, and permit the trustee to intervene. The court denied the motion. Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The referee later heard evidence and disallowed the claim of

toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted res judicata of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U. S. C. A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act, and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state, its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, of the subordination of claims to other claims. Pepper v. Litton, 308 U. S. 295; Prudence Realization Corp. v. Geist, 316 U. S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an alleged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from a simple contract debt, or an unliquidated claim, into a judg

ment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection. Pepper v. Litton, *supra*. And in the absence of a well grounded plea of *res judicata* the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real debt of the bankrupt. Pepper v. Litton, *supra*.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Woodruff expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him constitutes *res judicata* here to that extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, *supra*.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the

rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Woodruff to vacate the judgment, by the motion of the trustee and the defendant Woodruff to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, *supra*. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, *supra*, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions, in accordance with Rule of Civil Procedure, 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may

be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310; Kelley v. Everglades Drainage District, 319 U. S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

Huxman, Circuit Judge, Dissenting:

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is *res judicata*.

It is of course well settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment, but where the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels, and by the use of

perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on

July 20, 1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . . . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud . . . . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original judgment by the use of false and fraudulent testimony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious.

false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to introduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. (2d) 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal: Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action

or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is *res judicata* not only as to those matters which were decided, but also as to all matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U. S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

A true copy.

Attest: ROBERT B. CARTWRIGHT,
Clerk U. S. Circuit Court of Appeals, Tenth Circuit.

[SEAL.] By GEORGE A. PEASE,
Chief Deputy Clerk.

Opinion in Ninth Circuit (in Case No. 9356).

United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 9356.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

Before Denman, Mathews and Stephens, Circuit Judges.

Mathews, Circuit Judge:

This appeal is from (1) an order which, on June 29, 1939, refused to modify a default judgment in an action for damages for conversion of property and (2) an order which on September 26, 1939, denied a motion to vacate the judgment, set aside the entry of default and permit answers to be filed.

The action was brought by appellee, M. E. Heiser, against Leonard Woodruff and others in the District Court of the United States for the Southern District of California. Appellee is a British subject. Woodruff is a citizen of California and a resident of the Southern District thereof. One of Woodruff's co-defendants is a citizen of Nevada. The others are citizens of California. The amount in controversy exceeded, exclusive of interest and costs, the sum of $3,000. The District Court has jurisdiction of the action.

The action was commenced on July 11, 1935. Summons was issued on that day, but, being unable to find the defendants, the marshal returned that summons unserved. Another summons was issued on April 21, 1937. On January 25, 1939, E. M. Daniels was specially appointed

by the court to serve the summons and complaint on Woodruff,[1] but Daniels never made such service. The marshal on January 31, 1939, did make such service by leaving copies of the summons and complaint at Woodruff's dwelling house and usual place of abode with a person of suitable age and discretion then residing therein.[2]

On February 23, 1939, it appearing by affidavit and otherwise that Woodruff had failed to plead or otherwise defend, the clerk entered his default.[3] Thereafter appellee applied to the court for judgment. The court, on March 20, 1939, concluded a hearing to determine the amount of damages and, at the conclusion thereof, entered judgment against Woodruff for $164,000, with interest and costs.[4] From that judgment no appeal was taken.

On March 29, 1939, Woodruff filed a motion to vacate the judgment, set aside the entry of default and permit him to answer. The motion was heard on April 10, 1939, and, by an order entered on June 8, 1939, was denied. From that order no appeal was taken.

On May 25, 1939, appellee and Woodruff stipulated in open court that the court might hear evidence as to the value of the converted property, and that, if the value thereof was found to be less than the amount ($164,000) awarded by the judgment, the judgment might be modified accordingly. On June 29, 1939, a hearing was had, pursuant to the stipulation. Both parties (appellee and Woodruff) appeared and participated in the hearing. The court

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[1] Federal Rules of Civil Procedure, Rule 4(c).

[2] *Id.*, Rule 4(c), (d) (1).

[3] *Id.*, Rule 55(a).

[4] *Id.*, Rule 55(b) (2).

found that the value of the property was the amount awarded by the judgment. Accordingly, by an order entered on June 29, 1939, the court refused to modify the judgment.

On July 5, 1939, Woodruff was adjudged a bankrupt. On July 20, 1939, P. M. Jackson was appointed and qualified as trustee in bankruptcy of Woodruff's estate. On September 26, 1939, pursuant to written notice theretofore served and filed Jackson and Woodruff (hereafter called appellants) moved the court to vacate the judgment in the law action, set aside the entry of default and permit the filing of answers by appellants. The motion was heard and, by an order entered on September 26, 1939, was denied. From that order and the order of June 29, 1939, this appeal was taken on September 29, 1939.

The order of June 29, 1939, was not a final decision, within the meaning of Section 128 (a) of the Judicial Code, 28 U. S. C. A., Section 225(a), and was not appealable.

Republic Supply Co. v. Richfield Oil Co., 9 Cir., 74 F. (2d) 909, 910; Benson v. United States, 9 Cir., 93 F. (2d) 749, 751.

A claimed ground of appellants' motion of September 26, 1939, was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud. Thus, by their motion, appellants instituted what was, in effect, an independent action or proceedings. Hence, the

order of September 26, 1939, was a final decision, within the meaning of Section 128(a) of the Judicial Code, 28 U. S. C. A., Section 225(a), and was appealable Stevirmac Oil Co. v. Dittman, 245 U. S. 210, 214, 216; Rust v. United Waterworks Co., 8 Cir., 70 F. 129, 132.

The District Court properly refused to vacate the judgment as having been obtained without valid service of process. For, as previously shown, service was made on January 31, 1939, in accordance with Rule 4 of the Federal Rules of Civil Procedure then in effect, and was, we think, valid service. Furthermore, even if not validly served with process Woodruff, by entering into the stipulation of May 25, 1939, and by participating in the hearing of June 29, 1939, waived such service and voluntarily submitted himself to the jurisdiction of the court.

The charge that the judgment was obtained by fraud was denied and not proved. That ground of appellants' motion appears to have been abandoned. Other claimed grounds of the motion were that the judgment was prematurely entered and was otherwise erroneous; that the complaint did not state a cause of action and was otherwise defective; and that the complaint showed on its face that the action was barred. These were matters which, if true, might have been urged as defenses or, if the judgment had been appealed from, as grounds for reversal. They were not grounds on which, without more, the court rendering the judgment could properly vacate it.

As further (and final) ground of their motion appellants stated that they, Jackson and Woodruff, had a good

defense to the action, but were prevented from presenting it by reason of fraud, accident, surprise and excusable neglect. The statement that Jackson had a defense to the action and was prevented from presenting it was obviously untrue, as he was not a party to the action. As to Woodruff, the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it. In this, we cannot say that the court erred, much less that it abused its discretion.

The appeal, insofar as it is or purports to be an appeal from the order of June 29, 1939, is dismissed.

The order of September 20, 1939, is affirmed.

WILLIAM DENMAN,
United States Circuit Judge.

CLIFTON MATHEWS,
United States Circuit Judge.

ALBERT LEE STEPHENS,
United States Circuit Judge.

[Filed April 30, 1940.]

Opinion of Judge Rice, United States District Court (in Case No. 7623).

In the District Court of the United States, for the Eastern District of Oklahoma.

In the Matter of the Bankruptcy of Leonard J. Woodruff, Debtor. No. 7623 in Bankruptcy.
[Filed June. 23. 1944.]

MEMORANDUM.

On July 5, 1939, Leonard J. Woodruff (hereinafter referred to as the bankrupt), was adjudged to be a bankrupt by this court upon his voluntary petition filed herein. This was but a few days after the United States District Court for the Southern District of California, Central Division, had refused after a hearing to modify a judgment which had been entered against the bankrupt on March 20, 1939. Prior thereto, the United States District Court for California had refused to set aside an entry of default judgment against the bankrupt. It is my conclusion that the action of the California Court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankruptcy in this court. The chief controversy in this proceeding has centered upon the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above.

In the bankruptcy proceeding three groups of claims have been filed: (1) Claim of Heiser, based upon his judgment, (2) Claim of Willie May Woodruff, wife of the bankrupt, and (3) The claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff, Jr., children of the bankrupt. The claim of Heiser was

denied by the referee. The claim of Willie May Woodruff, the wife, was allowed by the referee in the total amount of $812,176.15, being $477,750.68 principal and $334,425.47 interest to the date of the order. The claim of Howard L. Woodruff was allowed for the total sum of $75,177.12. The claim of Margueritte B. Woodruff was allowed in the total sum of $83,097.33. The claim of Leonard Woodruff, Jr., was allowed in the total sum of $53,097.33. The action of the referee in disallowing Heiser's claim and in allowing the claim of the wife and the claims of the children are now here on bill of review brought by Heiser.

The bankrupt, his wife and three children, objected to Heiser's claim. Heiser objected to the claim of the wife and the claim of each of the children except that Heiser admitted the claim of the wife should be allowed to the extent of $18,000.00 and that the claim of Howard L. Woodruff should be allowed in the sum of $2,048.75.

The three groups of claims will be discussed separately.

CLAIM OF HEISER.

P. M. Jackson, an attorney of Ardmore, Oklahoma, was appointed and qualified as trustee in bankruptcy of the bankrupt's estate. Early in these proceedings the trustee joined by the bankrupt and the other two groups of creditors applied to this court for authority to begin proceedings in the United States District Court for the Southern District of California to vacate and set aside the judgment rendered therein. The trustee was authorized by this court to employ competent counsel in California to represent him, to take all necessary and proper steps to vacate the Heiser judgment. This the trustee did. The bankrupt joined in the action begun by the trustee. The

result of their efforts is disclosed in the decision of the Circuit Court of Appeals of the Ninth Circuit, Jackson v. Heiser, 111 Fed. (2d) 310. The history of this judgment is well disclosed in the opinion of the Circuit Court, *supra*. It is not necessary herein to recount the facts set forth therein.

The referee in his certificate of review states that two questions are presented: (1) Does the judgment prevent the bankruptcy court from considering the underlying claim of Heiser and allowing or disallowing it in whole or in part? (2) Is the evidence of objectors sufficient to defeat the claim? The referee answered the first question in the negative, the second in the affirmative, and disallowed the claim. In my opinion the referee erred in answering the first question as he did, and it was not necessary to consider the second.

The Heiser judgment was and is a final judgment entered by a United States District Court, a member of the same judicial body of which this court is a member. Before reaching this court for decision in bankruptcy it had been attacked by both the bankrupt and the trustee in bankruptcy who was acting for the benefit of the other creditors. The judgment had the approval not only of the trial court but of the Circuit Court. It is *res judicata* as to all matters actually litigated or which might have been litigated therein. Moffett v. Robbins, 81 Fed. (2d) 458; *In re* Cherokee Public Service Co., 94 Fed. (2d) 53[illegible].

Section 63 a (1) of the Bankruptcy Act (11 U. S. C. A. Sec. 103 (a) (1), is applicable and provides debts of bankrupt are provable and allowable which are founded upon

"* * * a fixed liability as evidenced by a judgment * * * absolutely owing at the time of the filing [illegible]

petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date * * *"

For a discussion on the conclusiveness of judgments in bankruptcy, see Gilbert's Collier on Bankruptcy, Fourth Edition, Sec. 1247, page 608; also Collier on Bankruptcy, 14th Edition, Vol. 3, page 1817; Murphy v. McLoughlin, 247 Fed. 385; Beneficial Loan Co. v. Noble, 129 Fed. (2d) 425.

In Pepper v. Litton, 308 U. S. 295, the Supreme Court held that the attack of a trustee in the state court upon the judgment involved therein was not *res judicata*. In the opinion the court said:

"And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties or is founded upon no real debt."

and in a foot-note the court said with respect to the above statement:

"This is, of course, in absence of a plea of *res judicata*."

In his application to this court by the trustee in which application the objectors joined to attack the Heiser judgment, it was stated that the judgment was based upon an erroneous, unjust and void judgment and was without merit. The order of this court to the trustee was full and complete authorizing him to do any and all things necessary and proper to avoid the judgment and thus defeat any claim based thereon. The purpose in authorizing the trustee to begin such proceedings was to defeat the judgment and thus avoid a claim based thereon in the bankruptcy proceedings. Had the trustee succeeded in his action, Heiser's claim based upon the judgment would

have been defeated; and had Heiser's judgment been defeated, that would have been an adjudication against him as to all his rights against the bankrupt. I think it follows that an adverse decision on the action begun by the trustee and the bankrupt is *res judicata* in favor of Heiser. See Beneficial Loan Co., v. Noble, 129 Fed. (2d) 425. For the effect to be given by this court, to the judgment of another United States District Court, see Caterpillar Tractor Co. v. International Harvester Co., 120 Fed. (2d) 82; Baldwin v. Iowa State Traveling Mens Association, 283 U. S. 522.

The action of the referee in disallowing Heiser's claim is error. The petition for review is allowed, and the referee's decision is reversed.

THE WIFE'S CLAIM.

Willie Mae Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and, when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and

securities with the exception of $18,000.00 was required to relieve the bankrupt of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more.

THE CHILDREN'S CLAIMS

The claims of the children are based upon alleged trusts created approximately twenty years before bankruptcy. The claimants present their claim upon the theory of a trust. The objector, Heiser, discusses their claims upon the theory of gifts *inter vivos*. The referee, after a hearing, determined that under the facts there was created a trust by the bankrupt in favor of each of the children in which trust the bankrupt was the trustee. These separate trusts were created by the purchase of certain stock for one or the other of the children. The evidence discloses the stocks that were purchased and the amount thereof and conclusively shows that these stocks were converted by the bankrupt many years ago.

The decision of the referee finding that there was a trust is sustained. However, the amount of the claim as

to each of the children should be reduced in the amount of $9,925.83 plus $11,132.50, or a total of $21,058.33. The reason for this reduction is as follows: The evidence in support of the creation of a trust was the evidence of the bankrupt himself, sustained by certain corroborating facts. The evidence of the bankrupt shows that the $9,925.83 item, plus the $11,132.50 mentioned above, was an investment in Imperial Irrigation bonds; that a short time after purchasing the Imperial Irrigation bonds he concluded that they were not a good investment and traded them for the Salt River Valley Water Users Association bonds; that the latter bonds proved to be more valuable; that the bankrupt subsequently converted and appropriated the Salt River Valley Waters Users Association bonds. The amount of the claim as approved by the referee includes the value of both bonds plus the interest upon the value of the bonds. The bankrupt did not make two investments for his children. He merely changed the form of an investment. There were not two additions to the corpus of the trust estate—there was only one; and the bankrupt's estate is chargeable only with the value of the Salt River Valley Water Users Association bonds. Included in the claim of each child, and allowed by the referee, is the item of $9,925.83, the value of the Imperial Irrigation bonds, plus $11,132.50 accumulated interest. This amount should be deducted from the claim of each child; and as modified the decision of the referee as to the claim of each of the children is approved.

An order conforming to the views herein is this date entered.

This the 23rd day of June, 1944.

EUGENE RICE,

United States District Judge.

In the District Court of the United States, for the Eastern District of Oklahoma.

In the Matter of the Bankruptcy of Leonard J. Woodruff, Debtor. No. 7623 in Bankruptcy

[Filed June 24, 1944.]

ORDER

Now on this 24th day of June, 1944, this case comes before this court for consideration on three separate certificates on review filed by the referee in bankruptcy, and based on petitions for review filed by M. E. Heiser, seeking review of an order of the referee disallowing the claim of Heiser in the amount of $278,631.71, an order allowing the claim of Howard L. Woodruff in the amount of $75,177.12, the claim of Margueritte B. Woodruff in the amount of $83,097.33, and the claim of Leonard Woodruff, Jr., in the amount of $53,097.33, and an order allowing the claim of Willie May Woodruff in the sum of $812,176.15.

On consideration of the briefs and oral arguments of the parties, the court being fully advised in the premises, is of the opinion and finds that the referee erred in denying the claim of M. E. Heiser, and that such claim should be allowed; that the referee erred in allowing in full claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff, Jr., and that each of such claims should be reduced in the amount of $21,058.33, and allowed as so reduced; and that the referee erred in allowing in full the claim of Willie May Woodruff, and that such claim should be denied except as to the sum of $18,000.00, in which amount she admittedly has a valid claim, and that such claim should be allowed in the amount of $18,000.00

It is, therefore, Ordered, Considered, Adjudged and Decreed that the petition for review of the Heiser claim is sustained; that the referee's order disallowing the said claim is set aside; and that the claim of M. E. Heiser in the amount of $278,631.71 is allowed.

It is further Ordered and Decreed that the petition for review of the referee's order allowing the claims of Howard L. Woodruff, Marguerite B. Woodruff and Leonard Woodruff, Jr., is sustained; that the referee's order allowing such claims is amended as to the amount of the claims; and that the claim of Howard L. Woodruff is allowed in the sum of $54,118.79, the claim of Marguerite B. Woodruff is allowed in the sum of $62,039.00, and the claim of Leonard Woodruff, Jr., is allowed in the sum of $32,039.00.

It is further Ordered and Decreed that the petition for review of the referee's order allowing in full the claim of Willie May Woodruff is sustained; that the referee's order is modified, and that the claim of Willie May Woodruff is allowed in the sum of $18,000.00, and is otherwise disallowed.

EUGENE RICE,

United States District Judge.

Referee's Certificate on Review.

To the Hon. Eugene Rice, District Judge:

154 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order was made disallowing the unsecured claim of M. E. Heiser, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser.

A claim was filed by said M. E. Heiser against the bankrupt estate in the sum of $278,631.71, the consideration as set forth in the proof of debtor being: Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $184,000.00 by false pretenses and false representations through willful, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon at the rate of 7% per annum, amounting to $113,036.71 and costs of $1,595.00 fixed by and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein, as plaintiff, and against Leonard Woodruff, bankrupt herein, as defendant; certified copy of which judgment of said United States Court is marked Exhibit "A", is hereto annexed and referred to as a part hereof.

A supplement to proof of claim of M. E. Heiser was thereafter filed.

Objections to claim of M. E. Heiser were filed by Leonard J. Woodruff, debtor, a petition for arrangement made under Chapter 11 having been filed by said Woodruff and an order made staying administration. Objections to the Heiser claim were also filed by Willa May Woodruff

Ida Belle Woodruff, Howard W. Woodruff, Margueritte B. Woodruff,, and Leonard Woodruff, Jr., creditors. Answers to the objections were filed by M. E. Heiser. Amendments to their objections to Heiser claim were filed by Ida Belle Woodruff and Willie May Woodruff.

The questions presented on this review are:

1. Does the default judgment of March 20, 1939, against Leonard Woodruff in favor of M. E. Heiser, the judgment of September 26, 1939, denying the Motions of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff, Debtor, and the decision of the Circuit Court of Appeals affirming the judgment of September 26, 1939, prevent the Bankruptcy Court from considering the underlying claim of M. E. Heiser and allowing or disallowing in whole or in part the claim of said M. E. Heiser as filed in the bankruptcy court?

155 2. Is the evidence produced by the objectors in opposition to the claim of M. E. Heiser sufficient to defeat such claim?

Res Adjudicata.

The original suit of Heiser vs. Woodruff *et al* was filed in the California Court on July 11, 1935. Woodruff was served with summons on January 31, 1939 and on the 23rd day of February, 1939, the default of Woodruff was entered by the Clerk of said Court.

On March 20, 1939, the judgment which is the basis of the Heiser claim was entered and on March 29, 1939, a Motion was filed by Woodruff to set aside the default judgment, and on June 8, 1939, an order was made denying Woodruff's Motion but providing that hearing be held to determine value of the property (gems); on June 29, 1939,

the value of the property was fixed at the amount fixed in the judgment.

On July 5, 1939, Woodruff filed voluntary petition and was adjudged bankrupt the same day.

On August 23, 1939, upon application of P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, an order was made by the Referee in Bankruptcy authorizing and directing said Trustee to take such action as might be necessary to have set aside the default judgment.

On the 28th day of September, 1939, the Motion of the Trustee was denied as was also the Motion of Leonard J. Woodruff. An appeal from the order of June 29, 1939, and from the order of September 26, 1939, was taken and Circuit Court of Appeals of the Ninth Circuit dismissed the appeal as to order of September 29, 1939 and affirmed the order of September 26, 1939. The decision of the Circuit Court of Appeals is reported in 111 Fed. (2d) 310.

Objectors' Exhibit DD, 7-27-42, is a certified transcript of Record, upon appeal from the District Court of the United States, for the Southern District of California, Central Division, in No. 9356 United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, appellants, vs. M. E. Heiser, appellee.

156 This Transcript of Record (Ex. DD) apparently is a complete record of the proceeding in which Heiser obtained the default judgment and also the proceeding in connection with the Motion of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff.

Objectors' Ex. CC, 7-27-42, is a Reporter's Transcript of Argument on Mo. on to Vacate Judgment and set aside

Default on September 29, 1939. This is the Motion to set aside default judgment filed by P. M. Jackson, Trustee and Leonard Woodruff.

Objectors' Ex. RR is a transcript of hearing to determine value of the gems after the entry of the default judgment in favor of Heiser, against Woodruff.

UNDERLYING CLAIM.

Objectors produced a large amount of evidence in support of their objections. Depositions of numerous witnesses were taken. The claimant offered no evidence on this point but relied on his judgment.

M. E. Heiser came to San Francisco from Australia the end of 1914 or the early part of 1915 on account of the Panama Pacific Exposition at San Francisco.

According to the testimony of M. E. Heiser the uncut gems ($164,000.00) of uncut sapphires, etc.) were brought to San Francisco in 1915 or latter part of 1914 and amounted to several tons. Heiser testified at the hearing to re-determine values in Heiser v. Woodruff in the District Court of California: "I represented the Queensland Government at the Panama Exposition as their expert cutter for demonstration in 1915 in San Francisco cutting to demonstrate how the gems were cut and how they were mined." In his deposition in this proceeding he stated that he was not the official representative of any Government.

The depositions of three Australian officials were taken by objectors. As shown by these depositions Heiser was not an official representative of the Australian Government nor of any State Government of Australia. That
157 Heiser obtained permission to operate a small lapidist's bench in the Australian Pavilion. That

"one of the conditions of Mr. Heiser's tenancy [illegible] Australian Pavilion was that no articles were to be sold by him therein. As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opals), the Australian Commissioners withdrew his permit to exhibit within the Australian Pavilion."

Heiser had his space in the Australian Pavilion about a week.

According to Heiser's testimony when he discontinued operations at the Exposition the cheaper material was stored in warehouse and other places and the better materials in the Wells Fargo Bank in San Francisco.

All this material according to Heiser's testimony (being the $164,000.00 worth of uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles. In Los Angeles it was stored in U. S. National Bank, Los Angeles, and none of the material was removed by anyone until it was removed under attachment in case of Woodruff vs. Golden State Gem Company.

Heiser went to Los Angeles in July, 1928, and shortly thereafter met Woodruff through one Calvin Smith who was connected with the Golden State Gem Company of California, a California Corporation. The Golden State Gem Company of Nevada, a Nevada Corporation, was thereafter organized. Woodruff appears to have owned no stock in either of these corporations. Woodruff did loan $10,000.00 to Smith in addition to amount then owing to him by Smith.

Heiser in August, 1928, left Los Angeles for Hollywood and did not return to Los Angeles until September or October, 1930.

In 1929 Woodruff filed suit against Golden State Gem Company of California and Golden State Gem Company of Nevada and the material in the U. S. National Bank was attached. The material was contained in thirty-six (36) sacks. At the sale Woodruff bought thirty-five sacks for $1000.00. One sack was purchased by James Oreck for his son. Oreck testified that he selected what he *though* was the best sack of material but that it proved later to be of no value.

While Heiser was in Europe the Golden State Gem Company of California was adjudged bankrupt. A claim was filed in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother in law, which was disallowed and upon appeal the appeal dismissed.

158 I hand up herewith for the information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs filed with Referee prior to order disallowing Heiser claim:

2. Brief on behalf of objectors to the claim of M. E. Heiser.

3. Reply brief in behalf of the claim of M. E. Heiser.

4. Petition for review.

5. Copy of order disallowing M. E. Heiser claim.

6. Copy of proof of debt of M. E. Heiser and Supplement thereto.

7. Objections of debtor, Leonard Woodruff, to claim of M. E. Heiser.

8. Answer to objections of Leonard J. Woodruff to M. E. Heiser.

9. Objections of Willie May Woodruff to claim of M. E. Heiser, and Amendment thereto.

10. Answer of M. E. Heiser to objections of Willie May Woodruff.

11. Objections of Ida Belle Woodruff to claim of M. E. Heiser and Amendment thereto.

12. Answer by M. E. Heiser to objections of Ida Belle Woodruff.

13. Objections of Howard Woodruff to claim of M. E. Heiser.

14. Answer of M. E. Heiser to objections of Howard Woodruff.

15. Objections of Margueritte Woodruff to claim of M. E. Heiser.

16. Answer of M. E. Heiser to objections of Margueritte Woodruff.

17. Objections of Leonard Woodruff, Jr., to claim of M. E. Heiser.

18. Answer of M. E. Heiser to objections of Leonard Woodruff, Jr.

19. Transcript of Hearing before Referee on objections to Heiser claim.

The following depositions taken on behalf of objectors:

20. Deposition of M. E. Heiser.

21. Deposition of D. K. Sterl.

22. Deposition of E. A. Lobree.

159 23. Deposition of Jefferson J. Graves.

24. Deposition of C. N. Olson, H. A. Dewing, C. W. McClain, J. A. Seelye, Francis B. Cobb, John Grable

Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck, and Claire E. Cone.

The following three (3) depositions were taken in Australia;

25. Deposition of Leo Joseph Jones.

26. Deposition of Adolphus Arnold Staines.

27. Deposition of David Barnett Edward.

28. Exhibits.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944. John H. Pugh, Clerk, U. S. District Court.

IN THE

Supreme Court of the United States

October Term, 1945

No. 490

M. E. HEISER,

Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELL WOODRUFF, and LEONARD J. WOODRUFF,

Respondents.

Brief of Petitioner, M. E. Heiser on Writ of Certiorari to the United States Circuit Court of Appeals, for the Tenth Circuit.

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SUBJECT INDEX

PAGE

Opinions below 1

Statement disclosing basis of jurisdiction 2

Questions presented 4

Statement of the case 8

Specification of errors 13

Summary of argument 15

Argument 16

A. Res judicata 16

B. The judgment of the United States Circuit Court for the Ninth Circuit against the trustee in bankruptcy, affirming the judgment of the United States District Court at Los Angeles, was res judicata as to all matters actually litigated or which might have been litigated therein 19

C. Intrinsic and extrinsic fraud 20

D. Full faith and credit 27

E. The attack by the creditors, through the trustee in bankruptcy, upon the final judgment of Heiser against Woodruff, the bankrupt, was a collateral attack 28

F. The trustee represents all creditors and they are bound by his action and by the judgment against him 29

G. A final judgment cannot be attacked for alleged perjury in its procurement, or that the allegations of the complaint were knowingly false 31

Conclusion 35

INDEX TO APPENDIX

PAGE

1. Opinion and Order of Judge Rice, United States District Court, Oklahoma, in Case No. 7023 [R. Vol. I, p. 135] 2

2. Opinion of Ninth Circuit in Case No. 9356 [R. Vol. I, p. 291] 11

3. Opinion of Tenth Circuit (majority), in Case No. 3052 [R. Vol. II, p. 1239] 16

4. Opinion of Tenth Circuit (dissenting), in Case No. 3052 [R. Vol. II, p. 1243] 21

5. Order and Stipulation in United States District Court, California, in Case No. 7250C [R. Vol. I, p. 70] 26

6. Referee's Certificate on Review including Findings in Case No. 7023 (Oklahoma) [R. Vol. I, p. 148] 29

7. Order of Referee authorizing and directing trustee Jackson to institute legal action to vacate and set aside Judgment of M. L. Heiser against Bankrupt [R. Vol. I, p. 28] 37

IN THE

Supreme Court of the United States

October Term, 1945

No. 496

M. E. HEISER,

Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELL WOODRUFF, and LEONARD J. WOODRUFF,

Respondents.

PETITIONER'S BRIEF.

Opinions Below.

For logical sequence we give the opinions of the Courts below as follows, in this order printed in full in the Appendix to this brief:

1. The opinion of the Honorable Eugene Rice, United States District Judge for the Eastern District of Oklahoma, dated the 23rd day of June 1944, in which opinion the District Judge reversed the Referee in Bankruptcy with reference to the Heiser judgment claim.

2. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit, in Jackson, Trustee in Bankruptcy of the *Estate of L. J. Woodruff, Bankrupt*, and *L. J. Woodruff v. M. E. Heiser*, re-

ported in 111 Fed. (2d) 310, which judgment is printed in full in the Appendix to this brief.

3. The majority opinion of the United States Circuit Court of Appeals for the Tenth Circuit, which is printed in full in the Appendix to this brief.

4. The dissenting and minority opinion of the United States Circuit Court of Appeals for the Tenth Circuit (Justice Huxman), which is printed in full in the Appendix to this brief.

5. Order and Stipulation in the United States District Court for the Southern District of California dated June 8, 1939, printed in full in the Appendix to this brief.

Statement Disclosing Basis of Jurisdiction.

1. Jurisdiction is invoked under Sec. 240 of the Judicial Code, as amended in 28 U. S. C. A. 347, and the Act of February 13, 1925, Chapter 229, 43 Stat. 9365, Sec. 240a, amended May 22, 1939, and under Sec. 237 b as amended by Act of February 13, 1925 (43 Stat. 937).

2. Judgment of the United States Circuit Court of Appeals for the Tenth Circuit was entered on August 11, 1945. The petition for rehearing was filed by M. E. Heiser within the time allowed therefor by rule of court and an order denying said petition for rehearing was entered on September 4, 1945. An application for a writ of certiorari was presented October 5, 1945, pursuant to paragraph 5(b) of the rules of the Supreme Court of the United States, and was granted.

3. The questions sought to be determined in the United States Circuit Court of Appeals for the Tenth Circuit were the same legal questions previously determined in a proceeding between the same parties and previously determined by the United States Circuit Court of Appeals for the Ninth Circuit in their case No. 9356, reported in 111 Fed. (2d) 310; the decision of the United States Circuit Court of Appeals for the Tenth Circuit being in conflict with the decision of the United States Circuit Court of Appeals for the Ninth Circuit on the same matter and issues and between the same parties.

4. The cause sought to be reviewed herein involves the decision of an important question of *res judicata* and its application; it involves the question as to whether or not "full faith and credit" should be given judgments of United States District Courts and United States Circuit Courts of appeal by courts of equal jurisdiction upon the same issues and between the same parties; it involves an unprecedented opinion of a United States Circuit Court of Appeals which presents a new theory authorizing a collateral attack upon a judgment in equity proceedings and in bankruptcy based upon a general charge of intrinsic fraud; and it involves the decision of an important question of local law in a way in conflict with applicable local decisions, and the decision of an important question of federal law extending the principle of the case of *Pepper v. Litton* (308 U. S. 295), which has not been, but should be settled by the Supreme Court of the United States.

Questions Presented.

Point I.

Should the United States District Court of Oklahoma give "full faith and credit" to a final judgment of the United States District Court of California, affirmed by the Ninth Circuit Court of Appeals, against a trustee in bankruptcy and the bankrupt, and thereby preclude relitigation by a referee in bankruptcy, on the merits, of the same subject matter of such final judgment against the trustee?

Point II.

Is a judgment of the United States District Court of California, affirmed by the United States Circuit Court of Appeals for the Ninth Circuit, which has become final (wherein such Circuit Court decision holds that an independent equity action brought by a trustee in bankruptcy from Oklahoma in an effort to set aside the said final judgment for alleged fraud in its procurement is without merit)—*res judicata* as to that subject matter and binding upon the United States District Court of Oklahoma, in the presence of a well grounded plea of *res judicata*, to preclude the retrial of the same issues before the referee in bankruptcy in the Oklahoma bankruptcy proceeding?

Point III.

After a final judgment of (1) a United States District Court and (2) a final judgment of a United States Circuit Court of Appeals affirming it—both rendered on the same identical subject matter, *viz.*, allegations of fraud and perjury in the procurement of a judgment, and in the presence

of a well grounded plea of *res judicata*, may a referee in bankruptcy, under the guise of "examining the underlying claim," ignore the doctrines of *res judicata*, estoppel by judgment and "full faith and credit," and reverse the final judgment by a trial of the merits?

Point IV.

May an Oklahoma referee in bankruptcy try again, issues on the merits (and in the presence of a well grounded plea of *res judicata*), involving questions of fraud and perjury alleged to have been used in procuring a final judgment against the bankrupt and after creditors in bankruptcy, by their trustee upon order of the referee had theretofore selected a California forum to litigate the same questions of fraud and perjury as affecting the same final judgment in issue, and judgment was rendered against the trustee, with adverse final decisions by the United States District Court of California and by the United States Circuit Court of Appeals for the Ninth Circuit?

Point V.

May a referee in bankruptcy relitigate a question of intrinsic fraud and be allowed the opportunity of virtually reversing a final decision of a United States District Court and a United States Circuit Court of Appeals affirming it, after a trustee in bankruptcy and the bankrupt, acting under a written order of the referee in Oklahoma, had selected the federal courts in California (both District and Ninth Circuit) as the forum to litigate questions of fraud as grounds to vacate and set aside and test the validity of a final judgment of a California Federal court and there suffered adverse decisions in both federal courts?

Point VI.

Is it the intent and purpose of the Bankruptcy Act to afford a means (without charging extrinsic fraud) whereby a bankrupt and/or his creditors may avail themselves of the Bankruptcy Act to accomplish a result, the subject matter of which had proceeded to final judgment against the bankrupt prior to the adjudication of bankruptcy, and thereafter against the trustee in bankruptcy in courts having jurisdiction thereof, and concerning which no other or different result could have been accomplished without resort to the Bankruptcy Act?

Point VII.

Is a final judgment of the United States District Court for Southern California against a trustee in bankruptcy, in an independent action filed by him to test the validity of a judgment theretofore rendered by the same court against the bankrupt prior to the bankruptcy proceedings, *res judicata* as to all matters placed in issue by the trustee and/or litigated therein, and/or which could have been litigated therein by the trustee?

Point VIII.

After a judgment rendered by a United States District Court of California and affirmed by a United States Circuit Court of Appeals, in independent equity proceedings by a trustee in bankruptcy attacking for fraud the validity of a final judgment previously rendered against the bankrupt, can the same charges of intrinsic fraud alleged in obtaining the original judgment again be subsequently litigated before the referee in bankruptcy; or is the trustee bound to present and prove in the equity proceeding

every available ground of fraud of which he has knowledge or belief? Or, having charged fraud in such equity proceeding, which fraud was denied and not proved, can the trustee "apparently abandon" the charges that the material allegations in the original complaint upon which the previous judgment was rendered, were knowingly false, that such judgment was secured through the use of perjured testimony given by the plaintiff and that a fraud was thus committed upon the court, and then after his equity proceeding is determined against him by the court which rendered the original judgment, and that judgment affirmed on his appeal to the Circuit Court, can these same charges of intrinsic fraud in obtaining the original judgment be subsequently litigated again before the referee?

Point IX.

In an appeal to the United States Circuit Court of Appeals, are findings of a United States District Court on a Writ of Review from an order of a referee disallowing a claim based upon a final judgment of the United States District Court necessary, where the findings of the referee contained in his certificate on review are before the Circuit Court of Appeals, and showing (a) that the same issues were theretofore presented by the trustee in bankruptcy in an independent action filed by the trustee before the United States District Court that rendered said final judgment; (b) that said action was determined against the trustee and, upon his appeal, judgment was affirmed by the United States Circuit Court of Appeals; and (c) that a well grounded plea of *res judicata* setting forth said judgment was timely presented to such referee and denied by him?

Statement of the Case.

Prior to the Voluntary Bankruptcy proceeding of Leonard J. Woodruff in Oklahoma, the United States District Court for Southern District of California rendered a judgment of $278,631.71 against Woodruff, in favor of Heiser. Nine days after the entry, Woodruff appeared and moved to vacate the judgment on the ground (among others) that it had been procured by fraud and perjury as to values of the gems the Court had found in his judgment Woodruff had defrauded Heiser of. Woodruff without waiving his right to appeal stipulated [Appendix, No. 5, p. 26; R. Vol. I, p. 263] with plaintiff Heiser that the Court should hear evidence to determine if the values alleged in the complaint and contained in the judgment were right or wrong. In the same stipulation Heiser waived other damages. The trial under the stipulation and order of the Court pursuant thereto started June 12, and ended June 29. Evidence was introduced by plaintiff and defendant, many witnesses examined and many exhibits produced. Woodruff was represented by three attorneys, Ames Petersen, Robt. Beveridge and Edward Fitzpatrick. When the matter was submitted the trial court found the values were as represented in the complaint and refused to set aside the judgment. The judgment became final. Woodruff thereafter, on July 5, filed voluntary bankruptcy petition in Oklahoma and was forthwith adjudicated. A trustee, Jackson, was elected by creditors:—all creditors (excepting Heiser) filed written petition alleging that the California judgment was obtained by fraud and perjury, asking the Referee in Oklahoma to authorize and instruct the trustee to go to California and attack the judgment. [R. Vol. I, p. 20.] The trustee, Jackson, also in a separate petition, asked the same au-

thority and to employ counsel for that purpose. [R. Vol. I, p. 21.] On these petitions the Referee ordered such action taken. [R. Vol. I, p. 28.] The trustee, Jackson, joined by the bankrupt Woodruff then filed in the California District Court charging fraud in the procurement of the judgment, perjury as to the value of the gems converted by Woodruff and many other grounds set up in the pleadings and affidavits. Heiser denied the charges. The District Court heard and denied the relief. Trustee Jackson and Woodruff (after the trustee had sought and obtained further order of the Referee authorizing the same [R. Vol. I, p. .....]) appealed to the United States Circuit Court for the Ninth Circuit at San Francisco. The decision of that Court is found in its unanimous opinion printed in full in the Appendix hereto at page 11 and in the Transcript of Record Vol. I, p. 291. The case citation is 111 F. (2d) 310. The Ninth Circuit Court decided against trustee Jackson and Woodruff in every respect and on all issues and affirmed the judgment of the District Court. The judgment became final.

After the judgment so became final, the same identical charges, in the same words and identical worded phrases appearing in the affidavits and pleadings were filed as objections to the allowance of the Heiser judgment as a filed claim before the Oklahoma Referee. Heiser answered the objections by pleading, *res judicata* by reason of the California Federal Court decisions, estopped by judgments, and "full faith and credit".

While the Referee ignored these defenses, and retried the matter on its merits, the judgment creditor Heiser refused to rely on the merits and stood on his final judgments. The Referee denied the Heiser claim. [Appendix p. 29; R. Vol. I, p. 148.]

On a review of the Referee's findings the District Court of Eastern Oklahoma, reversed the Referee and allowed the Heiser claim. The basis of that decision on the "Claim of Heiser" is best stated by Judge Rice himself, in his findings and opinion [R. Vol. I, p. 156] which we have reprinted in the Appendix hereto at page 2.

From that decision of Judge Rice an appeal was taken by the bankrupt Woodruff and certain family creditors. The Tenth Circuit does not agree with the District Court or the Ninth Circuit Court, and by the 2 to 1 decision lays down the law of the case [R. Vol. II, p. 1243; Appendix p. 16]. The dissenting opinion of Justice Huxman, also printed in the Appendix hereto [p. 21], agrees with the opinion and findings of Judge Rice of the Oklahoma District Court and with the opinion of the Ninth Circuit.

While sending the case back to the District Court for findings, this majority opinion of the Tenth Circuit Court if allowed to remain as the law of the case would afford no protection whatever and wholly nullify the Heiser California judgments against the trustee Jackson and Woodruff.

Further essential facts of the case are stated in the opinions, decisions and order attached to this brief as an Appendix; and in the interest of brevity are not repeated.

The reasons relied upon briefly stated are:

(1) The Ninth Circuit Court has held that the action of the Oklahoma trustee, Jackson, in attacking the California judgment in the United States District Court in California was "an independent action" in equity to set aside the judgment on the charge and claimed ground

"that the judgment was obtained by fraud" and that "the charge that the judgment was obtained by fraud was denied and not proved." The appeal was decided adversely to the contentions of the trustee Jackson and the bankrupt and affirmed the judgment of the District Court against them both. The decision became final. (Citation of case *Jackson v. Heiser*, 111 F. (2d) 310. [R. Vol. I, p. 291; Appendix hereto, p. 11.]

A litigant may not plead his grounds and try part only; may not reserve to himself part for future litigation. A final judgment is *res judicata* of that which was decided or could have been decided in that action. The dissenting opinion of Justice Huxman in the Tenth Circuit, points out clearly the law in this regard in conflict with the theory of the majority opinion of Justice Bratton in this case. [R. Vol. II, p. 1243.] Also printed in full in the Appendix hereto, p. 16.]

(2) The question of fraud in the procurement of the California judgment was in issue and had already been decided twice in final judgments adversely to bankrupt and his trustee Jackson, before the Referee in Bankruptcy attempted to retry it on the merits. Justice Huxman states our position clearly in the third paragraph of his dissenting opinion.

(3) The majority opinion herein sought to be reversed, if allowed to be the law of the case, permits a Referee to allow a trustee to select a forum and raise all points involved and when the final decisions are adverse to the bankruptcy trustee, and the estate, to then ignore the final decisions and reverse the United States District Court for Southern California, and reverse the Circuit Court of Appeals for the Ninth Circuit.

(4) The majority opinion of the Tenth Circuit if permitted to stand establishes as law that even when well pleaded the defenses of "full faith and credit;" "estoppel by judgment" and "*res judicata*" based upon final judgments of the United States District Court and its Circuit Court of Appeals may be ignored by a Referee in Bankruptcy.

(5) The majority opinion of the Tenth Circuit herein sought to be reversed places an extended construction on *Pepper v. Litton*, 308 U. S. 295, and wrongfully holds that under that decision a Referee in Bankruptcy may under the guise of "examining the underlying claim" retry the merits of a judgment final in its scope against the trustee and the bankrupt as to "debt" and "fraud and perjury used in its procurement."

(6) The bankrupt attacked the judgment after its rendition and before bankruptcy—the trial court, the United States District Court in California permitted evidence to be taken in an adverse hearing from June 12 to June 29 to determine if he had given a judgment by being deceived as to values. After this extended adverse hearing this Court held that he would not disturb the judgment, that he had not been imposed upon and that the values shown were the same as alleged in the complaint and as shown to him on rendering of the judgment. He refused to set it aside and so ordered.

After bankruptcy, which voluntary proceeding followed immediately after this order, the trustee Jackson and the bankrupt jointly attacked the judgment and order,—this time under express written orders of the Referee in

Oklahoma on the application of the creditors and trustee. The decision, being again adverse, was on appeal to the Ninth Circuit by the trustee and bankrupt, affirmed and became final. The Referee under the opinion before this Court may ignore these final judgments against his trustee and permit the same creditors, who joined in the application for the orders, to again litigate before him the very same issues, notwithstanding the defenses of *res judicata*, estopped by judgment, and "full faith and credit," were well pleaded before him.

Specification of Errors.

The Circuit Court of Appeals for the Tenth Circuit erred:

(1) In holding that a final judgment of the United States District Court of California affirmed by the Circuit Court of Appeals for the Ninth Circuit between the same parties (*Jackson, Trustee v. Heiser*) on the same subject matter was not *res judicata* as to specific frauds alleged but not proved by the losing party (Trustee Jackson).

(2) In holding that a Referee in Bankruptcy may reverse the final judgment of the District Court of the United States and of the Ninth Circuit in affirming it, rendered against his Trustee in Bankruptcy on questions of intrinsic fraud alleged to have been perpetrated in the procurement of said District Court judgment.

(3) In holding that after a Trustee in Bankruptcy has selected a forum to try his contentions that a given

creditor's judgment had been procured by fraud and perjury and had suffered adverse final judgments against him on these subjects in said court, the Ninth Circuit, that the Referee in Bankruptcy could again relitigate same subjects and reverse final judgment of Ninth Circuit.

(4) In holding that after litigants (Trustee and Bankrupt) had expressly attacked a final judgment for alleged fraud and perjury in its procurement, that they could abandon one or more grounds, leave them for future litigation, and not be bound by the rule of *res adjudicata* or estoppel by judgment when the decision went against the litigating Trustee and Bankrupt and in favor of the judgment creditor.

(5) In holding that the decision of the Ninth Circuit, holding that the proceeding before it was an independent equity action attacking a final judgment for fraud in its procurement and that there was no fraud proven or found, is not entitled to "full faith and credit" in the District Courts of the Tenth Circuit.

(6) In holding that *Pepper v. Litton* is authority for a Referee in Bankruptcy to ignore a final judgment as *res adjudicata*—when validity of judgment has been attacked unsuccessfully by the Trustee in Bankruptcy on alleged grounds of fraud in its procurement.

Petitioner respectfully represents that said questions properly appear in the record and were raised before the trial court (Referee) and the United States District Court (on Writ of Review), and in the Circuit Court of Appeals.

Summary of Argument.

A. RES JUDICATA.

B. THE JUDGMENT OF THE U. S. CIRCUIT COURT FOR THE NINTH CIRCUIT AGAINST THE TRUSTEE IN BANKRUPTCY, AFFIRMING THE JUDGMENT OF THE U. S. DISTRICT COURT AT LOS ANGELES, WAS RES JUDICATA AS TO ALL MATTERS ACTUALLY LITIGATED OR WHICH MIGHT HAVE BEEN LITIGATED THEREIN.

C. INTRINSIC AND EXTRINSIC FRAUD.

D. FULL FAITH AND CREDIT.

E. THE ATTACK BY THE CREDITORS, THROUGH THE TRUSTEE IN BANKRUPTCY, UPON THE FINAL JUDGMENT OF HEISER AGAINST WOODRUFF, THE BANKRUPT, WAS A COLLATERAL ATTACK.

F. THE TRUSTEE REPRESENTS ALL CREDITORS AND THEY ARE BOUND BY HIS ACTION AND BY THE JUDGMENT AGAINST HIM.

G. A FINAL JUDGMENT CANNOT BE ATTACKED FOR ALLEGED PERJURY IN ITS PROCUREMENT, OR ON THE CHARGE THAT ALLEGATIONS OF THE COMPLAINT WERE KNOWINGLY FALSE.

Argument.

A. Res Judicata.

We respectfully submit that on the question of *res judicata*, the opinion of the Honorable Judge Eugene Rice of the United States District Court at Oklahoma, on review of the referee's findings, clearly states the sound rule of law announced by this Honorable Court applying to the facts in this case. That opinion is set out in full in the Appendix hereto as No. 1 at page 2, and it appears in the Transcript of Record in Volume I at pages 156, 157 and 158. The same is true of the dissenting opinion of the Honorable Judge Huxman of the United States Circuit Court of Appeals for the Tenth Circuit, which appears in the Appendix hereto as No. 4 at page 21, and also in Vol. II of the Transcript of Record at page 1243.

We adopt the citations and quotations from the decisions set out in the foregoing opinions, namely the Honorable Judge Rice of the U. S. District Court of Oklahoma and the dissenting opinion of the Honorable Judge Huxman of the U. S. Circuit Court of Appeals for the Tenth Circuit, and particularly on the subjects of *res judicata* and the principles governing intrinsic fraud. We submit that these rules of law apply in bankruptcy courts as well as all courts of equity.

The doctrine of *res judicata* is not a technical defense. It is a rule of fundamental and substantial justice, of public policy and of peace, and must be enforced by the courts. (*Hart Steel Co. v. R. R. Supply*, 244 U. S. 294, 299; *Sun Indemnity v. U. S.*, 91 Fed. (2d) 120, 121; *U. S. v. U. S. Fidelity & Guaranty Co.*, 106 Fed. (2d) 804, 809; *Bryan v. Hamrick*, 102 Fed. (2d) 145, 152.)

In the case of *Beneficial Loan Co. v. Noble*, 129 Fed. (2d) 425, the United States Circuit Court of Appeals for the Tenth Circuit, in reversing the United States District Court which permitted an attack on the final judgment of a Colorado State Court, after discussing the case of *Pepper v. Litton*, 308 U. S. 295, said:

> "Here, however, the bankruptcy court did not undertake to exercise its jurisdiction with respect to the allowance, rejection, or subordination of a claim, but undertook to inquire into the merits of the cause of action . . . that is to say, it undertook to relitigate the matters which had been held and determined by the state court. This, we think, it was precluded from doing under the doctrine of *res judicata*."

In that case the court cited *Beebe v. O'Reilly*, 124 Fed. (2d) 750, which was decided on the authority of *Stoll v. Gottlich*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104.

The same Tenth Circuit Court, in a unanimous opinion written by Honorable Justice Bratton in the case of *Brady, et al., v. Beams, et al.*, 132 Fed. (2d) 985, stated at page 986:

> "A United States Court sitting in equity may vacate and set aside a judgment for fraud which was extrinsic or collateral to the matter tried but not for fraud which was in issue in the former suit." (Citing *United States v. Throckmorton*, 98 U. S. 61, 25 L. Ed. 93, on *res judicata*.)

The same Tenth Circuit Court, in its mapority opinion written by the same judge in the case at bar, now rules in conflict, we submit, with its own decisions and, with the accepted decision of every other circuit. It now holds that,— notwithstanding that the trustee in bankruptcy

suffered judgment against him in an independent action in the United States District Court at Los Angeles to vacate and set aside a judgment for fraud and to test the validity of the original judgment, and which judgment was also held valid by the Ninth Circuit Court on an appeal by the trustee—the same creditors, upon whose application the referee ordered the trustee [No. 7, App. p. 37; R. Vol. I, p. 28] to make those proceedings in that forum, may now relitigate the matters which had been heard and determined by the United States District Court at Los Angeles at the time of the rendition of the original judgment and the proceedings subsequent thereto by the bankrupt. Not only would the Tenth Circuit opinion now permit the relitigation of these matters already adjudicated, but it sanctions the relitigation thereof notwithstanding, and in direct conflict with the separate judgment against the trustee in the United States District Court at Los Angeles in his separate attack on the original judgment in his independent action, and in direct conflict with the judgment of the United States Circuit Court of Appeals for the Ninth Circuit affirming the judgment of the United States District Court of California against the trustee upon his appeal from the judgment of the said District Court. In these proceedings the bankrupt joined with the trustee and suffered the same determination.

After all these proceedings and these judgments the Tenth Circuit Court majority opinion now holds that subsequent thereto these same creditors who applied for the order of the referee which directed the trustee to conduct these proceedings against the Heiser judgment and claim at the expense of the bankrupt estate (Appendix No. 7, p. 37) may again relitigate before the referee the

charges of these creditors as to intrinsic fraud, that "the through the use of perjured testimony given by Heiser and that a fraud was thus committed on the court and the parties."

We submit that the trustee Jackson was acting for all of the creditors of the estate of the bankrupt Woodruff in these proceedings ordered by the referee on the application of these creditors, and that the determination of such proceedings adverse to him by the United States District Court at California and on appeal by the United States Circuit Court for the Ninth Circuit constitutes *res judicata* before the referee and the United States District Court in Oklahoma and the Tenth Circuit Court and protects the judgment against collateral attack on all grounds charged or which could have been charged in such proceedings, including both extrinsic and intrinsic fraud which were in issue under the general charge of fraud, denied and not proved as held by the California courts.

B. The Judgment of the United States Circuit Court for the Ninth Circuit Against the Trustee in Bankruptcy, Affirming the Judgment of the United States District Court at Los Angeles, Was Res Judicata As to All Matters Actually Litigated or Which Might Have Been Litigated Therein.

The United States Circuit Court of Appeals for the Tenth Circuit decided the case of *Moffett v. Robbins*, 81 F. (2d) 931. The decision was written by the Honorable Justice Bratton who also wrote the majority opinion in the case at bar. Therein Justice Bratton again sets forth the rule of law which we submit is the prevailing rule throughout all of the circuits of the United States Courts but which he reverses in the case

at bar. In that case it was held that a judgment rendered by a court having jurisdiction is conclusive upon the parties and their privies in a subsequent action in the same cause of action as to all matters actually litigated or which might have been litigated therein, and this, notwithstanding that the judgment may have been erroneous in fact or in law.

This Honorable Court held in the case of *Werlein v. New Orleans*, 177 U. S. 390, 398, 20 Supreme Court 682, 44 L. Ed. 871:

> "In the National courts an adjudication is conclusive of all questions of both law and fact upon which the rights of the parties depend, of things which might have been determined as well as those which were."

The rule is well stated in Freeman on Judgments, 5th Ed., Vol. II, pages 1437 and 1438:

> "A single cause of action may have been based on several grounds, in which event, whether actually litigated or not they are all merged in the judgment which bars a new action for the same cause of action though on a different ground from the first."

C. Intrinsic and Extrinsic Fraud.

We have briefed fully the cases of intrinsic and extrinsic fraud, and the holdings of the Supreme Courts of California and Oklahoma with regard thereto, in a petition for rehearing which is set forth in full, with the brief thereon, in the Transcript of Record, Volume II, pages 1253 to 1291. For sake of brevity we do not repeat the discussions set out therein except to call this Honorable Court's attention to the fact that the majority opinion of the Tenth Circuit Court, in the case at bar, permits re-

litigation before the referee of charges of intrinsic fraud, viz.,

> "that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser and that a fraud was thus committed on the court and the parties."

Under the guise of examining the underlying claim, after the independent proceedings had by the trustee in the United States District Court at Los Angeles, and upon his appeal to the Ninth Circuit at the direction of the referee [No. 7, Appendix] and after the trustee had suffered judgment against him on all causes charged, including fraud, to vacate and set aside the original judgment.

The leading case of *U. S. v. Throckmorton*, 98 U. S. 61, 66, 25 L. Ed. 93, which refers to *Pico v. Cohn*, 91 Cal. 129, 133, 25 Pac. 970, the ruling case in California, the Court comments on the distinguishing features of these two types of fraud, concluding that equitable aid will be granted where it appears that "by some fraud practiced by the party securing relief against the judgment or decree, that party has been prevented from presenting all of his case to the court."

In the case of *Brady et al. v. Beams, et al., supra*, wherein the Tenth Circuit Court held that a United States Court sitting in equity may vacate and set aside a judgment for fraud which was extrinsic or collateral to the matter tried but not for fraud which was in issue in former suit,—a line of distinction between extrinsic

and intrinsic fraud is clearly stated by the same Honorable Justice Bratton in his opinion therein, at page 987:

> "Broadly stated, fraud practiced by a successful litigant which prevents his unsuccessful adversary from fully exhibiting his case, such as wrongfully preventing him or his material witnesses from attending the trial, inducing his attorney to professional delinquency or infidelity in connection with the case, or some other similar act, unmixed with fault or negligence on the part of the losing party, constitutes extrinsic or collateral fraud; and the introduction of perjured testimony or forged documents, or other cognate matter, which is actually considered in the judgment constitutes intrinsic fraud." (Citing *United States v. Throckmorton, supra; Vance v. Burbank*, 101 U. S. 514, 25 L. Ed. 929.)

Freeman on Judgments, Volume III, page 2567, 5th Ed. 25, places the accent on what is perhaps the main distinction between intrinsic and extrinsic fraud:

> "It must be borne in mind that it is not fraud in the cause of action but fraud in the management which entitles the party to relief."

In permitting the referee to now relitigate the charge "that the material allegations in the complaint were knowingly false" would be to reopen an issue which was decided: (1st) by the original judgment, and after a hearing as to the truth or falsity of the material allegations in the complaint; (2nd) by the proceedings of Leonard J. Woodruff in the U. S. District Court at Los Angeles before the bankruptcy proceedings; (3rd) by the proceedings of the trustee in bankruptcy in his independent action before the United States District Court

at Los Angeles pursuant to order of the referee upon application of the same creditors now seeking to relitigate these issues before the referee; and (4th) by the judgment of the United States Circuit Court of Appeals for the Ninth Circuit,—all of which denied relief on this issue. The unanimous opinion of said Ninth Circuit Court against the trustee in bankruptcy and the bankrupt, in the case of *Jackson v. Heisey*, 111 F. (2d) 310, stated, "that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned."

In view of the fact that the "nature" of the fraud alleged does not appear in the decision of the said Ninth Circuit Court, we submit that the charge of fraud referred to, standing alone, is broad enough to embrace every conceivable issue of fraud, not alone extrinsic but also intrinsic. Accordingly, all fraud was thus determined by the final judgments on this charge and we submit cannot again be litigated another time before the referee to enable him to disregard, reverse, and invalidate all the previous proceedings by the trustee in his independent action in the U. S. District Court of California, his appeal therefrom and the final judgments there on the same issues. We respectfully urge that to hold otherwise would be contrary to the law of the United States Court and of the State Courts of California and of Oklahoma. [See Transcript of Record, Vol. II, p. 1253.]

The fraud charged now before the court is intrinsic fraud and had been theretofore litigated by the bankrupt and creditors through their trustee in bankruptcy in the California courts. We submit the final judgments theretofore rendered against the trustee are *res judicata*, and it is contrary to all the applicable principles of law that the

issue of such intrinsic fraud can now be relitigated by the creditor before the referee, in the presence of a well grounded plea of *res judicata* and a different judgment rendered by the referee, the effect of which is to reverse the United States District Court at Los Angeles and the United States Circuit Court of Appeals for the Ninth Circuit, which have already found against the trustee in bankruptcy on the same issues by their final judgments.

The rule set out in *Root v. Woolworth*, 150 U. S. 401, 37 L. Ed. 1123, 14 S. Ct. 136, is stated in 31 Am. Jur. paragraph 654, at page 230, as follows:

> "The acts for which a court of equity will, on account of fraud, command relief from a judgment have relation to extrinsic or collateral fraud, intrinsic fraud is not sufficient for equitable relief—Fraud has been regarded as intrinsic within the meaning of this rule where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were, or could have been, litigated therein."

And in 31 Am. Jur. at paragraph 635, page 232, the following reasons are given for the distinction:

> "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment; and that otherwise litigation would be interminable."

We submit that this equity rule applies to the equity powers of the bankruptcy court as to a retrial of the issues tendered by the trustee before the Los Angeles court, and that the general rule is that a final judgment resulting

from litigation at the direction or with the consent of the bankruptcy court is liquidated by such a final judgment, which rule has been disregarded and reversed by the majority opinion in the case at bar.

In the case of *Brady, et al. v. Beams, et al.* (132 F. (2d) 985), Circuit Court of Appeals, Tenth Circuit, on December 30, 1942, the Honorable Justice Bratton, the learned Circuit Judge who wrote the majority opinion in the case at bar which we seek by this proceeding to reverse, wrote a unanimous opinion affirming the same trial judge, the Honorable Eugene Rice, whose judgment he now has reversed and on this subject matter, to wit: intrinsic and extrinsic Fraud. We submit the opinion in *Brady, et al. v. Beams, et al., supra*, is elemental law and is and has been the uniform case law throughout the state courts and United States courts. It is reversed in its entirety by the opinion in the case at bar. For example, in *Brady v. Beams, supra*, the opinion holds to the well settled principles: (a) "A Federal Court sitting in equity may vacate a judgment for extrinsic or collateral fraud but not for fraud which was in issue in former suits;" (b) "In action to set aside former judgment for extrinsic or collateral fraud, it is essential that discovery of alleged fraud be made after entry of judgment complained of;" (c) "Where facts allegedly constituting fraud were squarely before trial court in former action and before Circuit Court of Appeals and Supreme Court on appeal from such judgment and on Petition for Certiorari, failure of plaintiff to rely on such facts in former action to challenge in advance entry of judgment on ground of invalidity for extrinsic or collateral fraud precluded subsequent action to set aside judgment;" (d) "Where no useful purpose can be served in remanding cause to trial

court for some technical error in procedure when such error could be corrected with same result, judgment was affirmed."

All of the foregoing recitals might well have been written into the opinion in the case at bar but instead this profound reasoning is completely reversed by the same Tenth Circuit in an opinion written by the same judge. Now, if permitted to stand as law, a trustee in bankruptcy, on application of creditors and himself, can obtain an order of the referee in bankruptcy in Oklahoma that the California U. S. District Court which rendered a judgment against the bankrupt prior to bankruptcy, which judgment had become final, was the proper forum wherein to test the validity of such judgment; that the trustee employ counsel and proceed to do everything necessary or proper to vacate such judgment [Appendix No. 7, p. 37; R. Vol. I, p. 28], and after proceedings are had in such court by such trustee, joined in by the bankrupt, in the form of an independent equity action to vacate the judgment and to retry the case on its merits and after all issues tendered by the trustee and bankrupt are determined adversely to them, including the charge that the judgment was obtained by fraud (which charge was denied and not proved) and after the referee has on further application of the trustee and creditors ordered the trustee to appeal to the Ninth Circuit Court, and after the trustee (joined by the bankrupt) has done so and again suffered adverse decision affirming the U. S. District Court—and such determination has become final,—the same creditors can then file objections before the referee and, under the guise of testing the "underlying claim," the referee sitting as a court of equity may disregard the action of the trustee in California in the U. S. District Court and the

Ninth Circuit Court, and the final judgments therein, and may in the presence of a well grounded plea of *res judicata* setting up such final judgments against the trustee, retry the original case on its merits by the same general charge in the objections.

D. Full Faith and Credit.

We submit that the referee in bankruptcy was legally bound to give full faith and credit to the judgment of the United States District Court for the Southern District of California against the trustee in bankruptcy, and to the judgment of the United States Circuit Court of Appeals for the Ninth Circuit against the trustee in bankruptcy.

In the case of *Titus v. Wallick*, 306 U. S. 282, and in the case of *Coppedge v. Clinton, et al.*, 72 F. (2d) 531 (a decision of the Tenth Circuit Court), the "full faith and credit" clause has been judicially defined. In these cases the defeated party claimed that he could collaterally attack a judgment for fraud. The opinion of the Supreme Court, in the former case, by the Honorable Justice Hughes held that the lower court, in permitting such an attack, had done so in full violation of "the full faith and credit" clause of the United States Constitution.

In the case of *Milliken v. Meyer, supra*, the Honorable Justice Douglas stated:

> "The full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or the consistency of the decision, or the validity of the legal principles upon which the judgmnt is based."

The referee in bankruptcy cannot relitigate the issue of intrinsic fraud as to the charge of falsity of the allegations of the complaint or perjured testimony in obtaining the original judgment of March 20, 1939; the referee must respect the judgment of the United States District Court for the Southern District of California and the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, against the trustee in bankruptcy on his collateral attack wherein he charged both intrinsic and extrinsic fraud in obtaining the original judgment.

E. The Attack By the Creditors, Through the Trustee in Bankruptcy, Upon the Final Judgment of Heiser Against Woodruff, the Bankrupt, Was a Collateral Attack.

The opinion of Chief Justice Hughes in *Chicot Co. v. Baxter State Bank*, 308 U. S. 371, 378, holds that a judgment is *res judicata* not only as to those matters which were decided but also as to all matters which could have been presented for decision.

The opinion of Chief Justice Hughes in that case, wherein he quotes *Grubb v. Public Utilities Comm.*, 261 U. S. 470, and *Cromwell v. Sac. Co.*, 94 U. S. 351, might well be said as regards the view of the majority opinion of the United States Circuit Court of Appeals for the Tenth Circuit in the case at bar:

> "Such a view is contrary to the well settled principle that *res judicata* may be pleaded as a bar not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end."

And in regard to collateral attack his opinion stated:

> "And determination of such question, while open to direct review may not be assailed collaterally."

The opinion of the Tenth Circuit Court in the case at bar now would permit another collateral attack to test the validity of this original judgment under a theory of testing the underlying claim. The grounds, however, are the charges that the material allegations of the original complaint were knowingly false and that the judgment was secured through the use of perjured testimony allegedly given by Heiser. That would be a collateral attack on the ground of intrinsic fraud. This, we submit, he cannot do after judgment was rendered against the trustee in bankruptcy by the United States District Court for the Southern District of California, and affirmed by the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, after an appeal by the trustee. Those judgments were rendered against the trustee in bankruptcy as the result of the trustee's independent action, instigated in the federal court in California, wherein he included fraud as a ground of his attack but which was not proved, all as set out in the opinion of the Ninth Circuit. [Appendix No. 2, p. 11; R. Vol. I, p. 291.]

F. The Trustee Represents All Creditors and They Are Bound by His Action and by the Judgment Against Him.

In the case at bar, the objecting creditors of the bankrupt, Woodruff, all sought and obtained orders requiring the trustee in bankruptcy, P. M. Jackson, to litigate and test the validity of the Heiser judgment in the federal courts in California. [Appendix No. 7, p. 37; R. Vol. I, p. 28.]

In the case of *Fischer v. Pauline Oil Co.*, 60 Superior Court, p. 535, this Honorable Court held:

> "Where a trustee attacks a judgment in the court that rendered it and is unsuccessful he is estopped from setting up the same defense in the bankruptcy court."

It has been uniformly held, as set forth in the case of *In re Lewensohn*, 2 Civ., 121 Fed. 538, and the cases therein cited, that the trustee represents all the creditors and may therefore be relied upon to present all proper objections to the claims of those whose standing is questionable; and that a creditor, so far as he relies upon bankruptcy trustee to protect the estate against improper claims, is bound by what the trustee does or fails to do. (*Weil v. Neary*, 278 U. S. 160, 49 S. Ct. 144, 73 L. Ed. 243.)

In *Northwestern Pac. Railroad v. Slaught*, 205 U. S. 122, 27 S. Ct. 442, 51 L. Ed. 738, the court found that there was no substantial difference between the allegations previously made and those then before it, but if there be a difference the claim is one that respondents were required to bring forward in the prior suit.

We submit that it was never the intention of Congress to clothe a bankruptcy court with jurisdiction to reopen judgments and try cases summarily before a referee for intrinsic fraud, where a U. S. District court had already rendered a final judgment against the trustee and such court had jurisdiction of the subject matter and the parties. Of course, where the judgment was obtained by fraud or collusion the bankruptcy court would have jurisdiction; but even then it could not reopen the final judgment after the trustee in bankruptcy had once proceeded

in the court where the judgment was rendered, to have the judgment vacated and set aside in an independent proceeding and was unsuccessful; and the creditors cannot again set up the same matter before the bankruptcy court in face of a well grounded plea of *res judicata*. (*Fischer v. Pauline Oil Co., supra*, reversing 185 Okla. 108, 90 P. (2d) 411.).

G. A Final Judgment Cannot Be Attacked for Alleged Perjury in its Procurement, or That the Allegations of the Complaint Were Knowingly False.

We submit that the creditors of the bankrupt, Woodruff, cannot, under the guise of examining the underlying claim, again lawfully go before the referee in bankruptcy with objections to the claim based upon the original final judgment on the charge "that the material allegations in the complaint (original complaint) were knowingly false, that the judgment was secured through the use of perjured testimony given by the plaintiff and that a fraud was thus committed on the court and the parties." We submit that these creditors are forever precluded from again raising these same issues after the trustee in bankruptcy, representing these same creditors, has in an independent action collaterally attacked and tested the validity of a judgment on which the claim is based (all upon order of the referee [R. Vol. I, p. 28], based upon an application of creditors [R. Vol. I, p. 20] and the trustee [R. Vol. I, p. 21] and the bankrupt [R. Vol. I, p. 23] therefore, and after the trustee in bankruptcy has suffered a final judgment against him, both in the United States District Court, where the original judgment was rendered, and in the United States Circuit Court of Appeals (in all of which proceedings the bankrupt joined with the trustee), and wherein fraud was "charged, de-

nied and not proved." The Tenth Circuit opinion in the case at bar holds otherwise—even though the foregoing charges had reference to the complaint in the original action on which the original judgment resulted, and to testimony given in that action, all prior to the bankruptcy proceedings and prior to the commencement of the independent action by the trustee in both the District Court and the Ninth Circuit Court.

We respectfully direct this Honorable Court's particular attention to the "Bankrupt's statement with reference to the claim of M. E. Heiser" which appears in the Record, Vol. I, page 23. This was filed concurrently by the bankrupt with the application of the creditors [R. Vol. I, p. 20] and the application of the trustee in bankruptcy [R. Vol. I, p. 21] and before the referee made his order upon such pleadings authorizing and directing the trustee to institute legal action to vacate and set aside the judgment of M. E. Heiser against the bankrupt [R. Vol. I, p. 28], which order directed the trustee to employ counsel and proceed to test the validity of this judgment in California. The allegations of this Statement of the Bankrupt [R. Vol. I, p. 23] so filed with the referee prior to such order sets out under paragraph one "the material allegations of the complaint filed in said cause are untrue." [R. Vol. I, p. 23] This is the very same charge contained in the objection of the creditor which the Tenth Circuit majority opinion now permits the referee to relitigate nothwithstanding the well grounded plea of *res judicata* based upon the final judgments of the U. S. District Court at Los Angeles and of the U. S. Circuit Court of Appeals affirming it upon the proceedings instituted by the trustee in California pursuant to said order of the referee authorizing and directing the trustee so to do.

which order was in turn based upon the application of said objecting creditors and the trustee and the bankrupt. [R. Vol. I, pp. 20, 21 and 23.]

Commencing with the case of *Pico v. Cohn*, 91 Cal. 129, 25 Pac. 970, and through a long line of Federal cases and California and Oklahoma cases, it has been uniformly held that "a showing of fraud practiced at such hearing of the original action will not suffice."

In the leading opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66, 25 L. Ed. 93, it is said that equitable aid will be granted where it appears that "by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of its case to the court"; and the opinion states "an examination of the authorities as to what fraud will warrant the aid of equity discloses that only upon proof of extrinsic and collateral fraud can a plaintiff secure equitable relief from a judgment; a showing of fraud practiced at the hearing of the original action will not suffice. This is characterized as intrinsic fraud and since there must be an end to litigation and such fraud was part of the case presented in the former suit, equity will not reopen the matter."

Certainly false or perjured testimony or falsity in the allegations of the complaint are intrinsic fraud, against which a defense may be made at the trial; and these issues were tendered by the charge of fraud in the proceedings had by the trustee in California in both the United States District Court and the United States Circuit Court of Appeals for the Ninth Circuit, wherein he suffered final judgments against him, and which we submit is binding upon these creditors.

None of the issues in the contest before the referee, approved by the majority opinion (of the case at bar), *viz.*, "that the material allegations in the complaint were knowingly false" and that the judgment (March 20, 1939) was secured through the use of perjured testimony given by Heiser, included any charge of extrinsic fraud or any suggestion thereof, whether measured by the cases cited or otherwise. If such fraud had reference to the "underlying claim" in the circumstances of the case at bar, then the judgment of the District Court at Los Angeles and of the Ninth Circuit Court being final against the trustee and the bankrupt, all subsequent to the date of adjudication, we have a clean case where the bankrupt himself and the present objecting creditors, through the trustee in bankruptcy pursuant to the order of the referee, have instituted the attack in the U. S. District Court of California and suffered final judgments against them on these very issues. They have not been prevented from full participation therein and they are precluded from trying these intrinsic fraud issues again at this time before the referee.

Those questions that the trustee in bankruptcy, P. M. Jackson, raised in his proceedings in the United States Courts in California on the order of the referee, or those which he could have raised but failed to present and thereby waived, cannot be subsequently urged before the referee by the same creditors, upon whose application the refree made his said order to the trustee to take such proceedings. Neither the trustee nor the creditors may pre-

sent their attack by piecemeal. (*Jackson v. Irving Trust Co.*, 310 U. S. 261, 85 L. Ed. 10; *Titus v. Wallick*, 306 U. S. 282; *Chilot Co. Dist. v. Baxter State Bank*, 308 U. S. 371, 378; *Grub v. Public Utility Com.*, 281 U. S. 470, 478, 479; *Moffett v. Robbins*, 81 F. (2d) 431; *In re Cherokee Public Service Co.*, 94 F. (2d) 536; *Beneficial Loan v. Noble*, 129 F. (2d) 425.)

Conclusion.

The majority opinion of the United States Circuit Court of Appeals for the Tenth Circuit [Appendix No. 3, p. 16] in the case at bar is in direct conflict with the decision of the United States Circuit Court of Appeals for the Ninth Circuit [Appendix No. 2, p. 11] on the same matter in the case of *Jackson, etc. v. Heiser*, 111 F. (2d) 310. This constitutes a conflict of decisions on most important questions of bankruptcy law and equity which should be settled by this Honorable Court.

The opinion of the United States Court of Appeals for the Tenth Circuit in ruling that the referee in bankruptcy can now, in face of the record in the case at bar and in the presence of a well grounded plea of *res judicata*, hear and determine for a fifth time, the charge (a) that the material allegations of the complaint upon which the original judgment was obtained against Woodruff (March 20, 1939), were knowingly false, (b) that the said judgment was secured through the use of perjured testimony given by Heiser, and (c) that a fraud was thus committed upon the court which rendered the original judgment because such issues were never expressly adjudicated in

favor of Heiser,—is contrary to the foregoing ruling cases and the accepted law in all of the Circuits and to the decisions of this Honorable Court.

We submit that this majority opinion on the Tenth Circuit Court has so far departed from the accepted and usual course of jurisdictional proceedings in courts of bankruptcy before the referee, and of equity proceedings, and so far sanctions such departure by the lower courts, as to call for an exercise of this Honorable Court's power of supervision. We submit, further, that a final determination of this question by the Supreme Court of the United States is essential to the orderly and uniform administration of bankruptcy and equity cases.

The decision of the United States District Court of Oklahoma by the Honorable Eugene Rice, District Judge [Appendix No. 1, p. 2; R. Vol. I, p. 155], we submit should have been affirmed by the United States Circuit Court of Appeals for the Tenth Circuit in the case at bar based upon the sound principles of law set out in the opinion of Judge Rice [Appendix No. 1, p. 2] and approved in the dissenting opinion of the Honorable Justice Huxman [Appendix No. 4, p. 21; R. Vol. II; p. 1243]. The decision of the United States District Court by Judge Rice decides as a matter of law that the final judgments against the trustee in bankruptcy in the California courts instituted by the Trustee pursuant to the order of the referee on the application of the creditors, the trustee and the bankrupt, prevent the referee from sitting as a court in equity retrying upon its merits the two charges of

intrinsic fraud, namely, that the allegations of the complaint in the original action upon which the original judgment was rendered prior to the bankruptcy proceedings were knowingly false and that perjury was committed in obtaining such original judgment.

It follows that if the referee in bankruptcy cannot reverse the final judgment of the U. S. District Court of California (affirmed by final judgment of the U. S. Circuit Court of Appeals for the Ninth Circuit) against the trustee on proceedings had pursuant to order of the referee (upon application of the creditors, trustee and bankrupt therefor) to set aside and vacate and test the validity of a final judgment rendered by that Court against the bankrupt prior to the bankruptcy proceedings, he cannot thereafter, in the presence of a well grounded plea of *res judicata*, under the guise of "testing the underlying claim," which claim is based upon such final judgments, retry on the merits the same charges of the creditors: (a) Alleged perjury in the procurement of the original judgment, final before the bankruptcy proceedings; (b) the allegations of the complaint in such original action were knowingly false; both of which charges were in issue in and determined adversely to the trustee in such proceedings had by the trustee in such California courts. Remanding the case to the U. S. District Court of Oklahoma for findings on such merits is a useless and futile ruling in conflict with law and justice, and would result in endless, complicated, extended proceedings in bankruptcy never contemplated or heretofore permitted.

We respectfully submit that no useful purpose can be served by remanding these two issues to the United States District Court for a further finding upon the merits as directed in the majority opinion of the United States Circuit of Appeals for the Tenth Circuit, herein sought to be reversed.

Wherefore, it is respectfully submitted that the judgment of the United States Circuit Court of Appeals for the Tenth Circuit in the case at bar should be reversed and the judgment of the Honorable Eugene Rice, Judge of the United States District Court for the Eastern District of Oklahoma, should be affirmed.

Dated this 9th day of February 1946.

LEONARD J. MEYBERG,
208 West Eight Street, Los Angeles 14,
Counsel for Petitioner,

RUPERT B. TURNBULL,
Of Counsel.

APPENDIX.

1. Opinion and Order of Judge Rice, United States District Court, Oklahoma, in Case No. 7623. (R. Vol. I, p. 155.).

2. Opinion of Ninth Circuit in Case No. 9350. (R. Vol. I, p. 291.)

3. Opinion of Tenth Circuit (majority), in Case No. 3052. (R. Vol. II, p. 1239.)

4. Opinion of Tenth Circuit (dissenting), in Case No. 3052. (R. Vol. II, p. 1243.)

5. Order and Stipulation in United States District Court (California) in Case No. 7256C. (R. Vol. I, p. 70.)

6. Referee's Certificate on Review including Findings in Case No. 7623 (Oklahoma). (R. Vol. I, p. 148.)

7. Order of Referee authorizing and directing trustee Jackson to institute legal action to vacate and set aside Judgment of M. E. Keiser against Bankrupt. (R. Vol. I, p. 28.)

Opinion of Judge Rice, United States District Court (in Case No. 7623).

In the District Court of the United States, for the Eastern District of Oklahoma.

In the Matter of the Bankruptcy of Leonard J. Woodruff, Debtor. No. 7623 in Bankruptcy.

[Filed June 23, 1944.]

MEMORANDUM.

On July 5, 1939, Leonard J. Woodruff (hereinafter referred to as the bankrupt), was adjudged to be a bankrupt by this court upon his voluntary petition filed herein. This was but a few days after the United States District Court for the Southern District of California, Central Division, had refused after a hearing to modify a judgment which had been entered against the bankrupt on March 20, 1939. Prior thereto, the United States District Court for California had refused to set aside an entry of default judgment against the bankrupt. It is my conclusion that the action of the California Court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankruptcy in this court. The chief controversy in this proceeding has centered upon the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above.

In the bankruptcy proceeding three groups of claims have been filed: (1) Claim of Heiser, based upon his judgment, (2) Claim of Willie May Woodruff, wife of the bankrupt, and (3) The claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff, Jr., children of the bankrupt. The claim of Heiser was

denied by the referee. The claim of Willie May Woodruff, the wife, was allowed by the referee in the total amount of $812,176.15, being $477,750.68 principal and $334,425.47 interest to the date of the order. The claim of Howard L. Woodruff was allowed for the total sum of $75,177.12. The claim of Margueritte B. Woodruff was allowed in the total sum of $83,097.33. The claim of Leonard Woodruff, Jr., was allowed in the total sum of $53,097.33. The action of the referee in disallowing Heiser's claim and in allowing the claim of the wife and the claims of the children are now here on bill of review brought by Heiser.

The bankrupt, his wife and three children, objected to Heiser's claim. Heiser objected to the claim of the wife and the claim of each of the children except that Heiser admitted the claim of the wife should be allowed to the extent of $18,000.00, and that the claim of Howard L. Woodruff should be allowed in the sum of $2,048.75.

The three groups of claims will be discussed separately.

Claim of Heiser.

P. M. Jackson, an attorney of Ardmore, Oklahoma, was appointed and qualified as trustee in bankruptcy of the bankrupt's estate. Early in these proceedings the trustee joined by the bankrupt and the other two groups of creditors applied to this court for authority to begin proceedings in the United States District Court for the Southern District of California to vacate and set aside the judgment rendered therein. The trustee was authorized by this court to employ competent counsel in California to represent him, to take all necessary and proper steps to vacate the Heiser judgment. This the trustee did. The bankrupt joined in the action begun by the trustee. The

result of their efforts is disclosed in the decision of the Circuit Court of Appeals of the Ninth Circuit, Jackson v. Heiser, 111 Fed. (2d) 310. The history of this judgment is well disclosed in the opinion of the Circuit Court, *supra*. It is not necessary herein to recount the facts set forth therein.

The referee in his certificate of review states that two questions are presented: (1) Does the judgment prevent the bankruptcy court from considering the underlying claim of Heiser and allowing or disallowing it in whole or in part? (2) Is the evidence of objectors sufficient to defeat the claim? The referee answered the first question in the negative, the second in the affirmative, and disallowed the claim. In my opinion the referee erred in answering the first question as he did, and it was not necessary to consider the second.

The Heiser judgment was and is a final judgment entered by a United States District Court, a member of the same judicial body of which this court is a member. Before reaching this court for decision in bankruptcy, it had been attacked by both the bankrupt and the trustee in bankruptcy who was acting for the benefit of the other creditors. The judgment had the approval not only of the trial court but of the Circuit Court. It is *res judicata* as to all matters actually litigated or which might have been litigated therein. Moffett v. Robbins, 81 Fed. (2d) 431; *In re* Cherokee Public Service Co., 94 Fed. (2d) 536.

Section 63 a (1) of the Bankruptcy Act (11 U. S. C. A. Sec. 103 (a) (1), is applicable and provides debts of a bankrupt are provable and allowable which are founded upon

"* * * a fixed liability as evidenced by a judgment * * * absolutely owing at the time of the filing of the

petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date * * *."

For a discussion on the conclusiveness of judgments in a bankrupty, see Gilbert's Collier on Bankruptcy, Fourth Edition, Sec. 1247, page 968; also, Collier on Bankruptcy, 14th Edition, Vol. 3, page 1817; Murphy v. McLaughlin, 247 Fed. 385; Beneficial Loan Co. v. Noble, 129 Fed. (2d) 425.

In Pepper v. Litton, 308 U. S. 295, the Supreme Court held that the attack of a trustee in the state court upon the judgment involved therein was not *res judicata*. In the opinion the court said:

"And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties or is founded upon no real debt."

and in a foot-note the court said with respect to the above statement:

"This is, of course, in absence of a plea of *res judicata*."

In his application to this court by the trustee (in which application the objectors joined) to attack the Heiser judgment, it was stated that the judgment was based upon an erroneous, unjust and void judgment and was without merit. The order of this court to the trustee was full and complete authorizing him to do any and all things necessary and proper to avoid the judgment and thus defeat any claim based thereon. The purpose in authorizing the trustee to begin such proceedings was to defeat the judgment and thus avoid a claim based thereon in the bankruptcy proceedings. Had the trustee succeeded in his action, Heiser's claim, based upon the judgment, would have been defeated; and had Heiser's judgment been de-

feated, that would have been an adjudication against him as to all his rights against the bankrupt. I think it follows that an adverse decision on the action begun by the trustee and the bankrupt is *res judicata* in favor of Heiser. See Beneficial Loan Co. v. Noble, 129 Fed. (2d) 425. For the effect to be given by this court to the judgment of another United States District Court, see Caterpillar Tractor Co. v. International Harvester Co., 120 Fed. (2d) 82; Baldwin v. Iowa State Traveling Men's Association, 283 U. S. 522.

The action of the referee in disallowing Heiser's claim is error. The petition for review is allowed, and the referee's decision is reversed.

THE WIFE'S CLAIM.

Willie Mae Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and securities with the exception of $18,000.00, was required

to relieve the bankrupt of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more.

THE CHILDREN'S CLAIMS.

The claims of the children are based upon alleged trusts created approximately twenty years before bankruptcy. The claimants present their claim upon the theory of a trust. The objector, Heiser, discusses their claims upon the theory of gifts *inter vivos*. The referee, after a hearing, determined that under the facts there was created a trust by the bankrupt in favor of each of the children in which trust the bankrupt was the trustee. These separate trusts were created by the purchase of certain stocks for one or the other of the children. The evidence discloses the stocks that were purchased and the amount thereof, and conclusively shows that these stocks were converted by the bankrupt many years ago.

The decision of the referee finding that there was a trust is sustained. However, the amount of the claim as

to each of the children should be reduced in the amount of $9,925.83 plus $11,132.50, or a total of $21,058.33. The reason for this reduction is as follows: The evidence in support of the creation of a trust was the evidence of the bankrupt himself, sustained by certain corroborating facts. The evidence of the bankrupt shows that the $9,925.83 item, plus the $11,132.50 mentioned above, was an investment in Imperial Irrigation bonds; that a short time after purchasing the Imperial Irrigation bonds he concluded that they were not a good investment and traded them for the Salt River Valley Water Users Association bonds; that the latter bonds proved to be more valuable; that the bankrupt subsequently converted and appropriated the Salt River Valley Waters Users Association bonds. The amount of the claim as approved by the referee includes the value of both bonds plus the interest upon the value of the bonds. The bankrupt did not make two investments for his children. He merely changed the form of an investment. There were not two additions to the corpus of the trust estate—there was only one; and the bankrupt's estate is chargeable only with the value of the Salt River Valley Water Users Association bonds. Included in the claim of each child, and allowed by the referee, is the item of $9,925.83, the value of the Imperial Irrigation bonds, plus $11,132.50 accumulated interest. This amount should be deducted from the claim of each child; and as so modified the decision of the referee as to the claim of each of the children is approved.

An order conforming to the views herein is this day entered.

This the 23rd day of June, 1944.

EUGENE RICE,
United States District Judge.

In the District Court of the United States, for the Eastern District of Oklahoma.

In the Matter of the Bankruptcy of Leonard J. Woodruff, Debtor. No. 7623 in Bankruptcy.

[Filed June 24, 1944.]

ORDER.

Now on this 24th day of June, 1944, this case comes before this court for consideration on three separate certificates on review filed by the referee in bankruptcy, and based on petitions for review filed by M. E. Heiser, seeking review of an order of the referee disallowing the claim of Heiser in the amount of $278,631.71, an order allowing the claim of Howard L. Woodruff in the amount of $75,177.12, the claim of Margueritte B. Woodruff in the amount of $83,097.33, and the claim of Leonard Woodruff, Jr., in the amount of $83,097.33, and an order allowing the claim of Willie May Woodruff in the sum of $812,176.15.

On consideration of the briefs and oral arguments of the parties, the court being fully advised in the premises, is of the opinion and finds that the referee erred in denying the claim of M. E. Heiser, and that such claim should be allowed; that the referee erred in allowing in full claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff, Jr., and that each of such claims should be reduced in the amount of $21,058.33, and allowed as so reduced; and that the referee erred in allowing in full the claim of Willie May Woodruff, and that such claim should be denied except as to the sum of $18,000.00, in which amount she admittedly has a valid claim, and that such claim should be allowed in the amount of $18,000.00.

It is, therefore, Ordered, Considered, Adjudged and Decreed that the petition for review of the Heiser claim is sustained; that the referee's order disallowing the said claim is set aside; and that the claim of M. E. Heiser in the amount of $278,631.71 is allowed.

It is further Ordered and Decreed that the petition for review of the referee's order allowing the claims of Howard L. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff, Jr., is sustained; that the referee's order allowing such claims is amended as to the amount of the claims; and that the claim of Howard L. Woodruff is allowed in the sum of $54,118.79, the claim of Margueritte B. Woodruff is allowed in the sum of $62,039.00, and the claim of Leonard Woodruff, Jr., is allowed in the sum of $32,039.00.

It is further Ordered and Decreed that the petition for review of the referee's order allowing in full the claim of Willie May Woodruff is sustained; that the referee's order is modified, and that the claim of Willie May Woodruff is allowed in the sum of $18,000.00, and is otherwise disallowed.

EUGENE RICE,
United States District Judge.

Opinion in Ninth Circuit (in Case No. 9356).

United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 9356.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

Before Denman, Mathews and Stephens, Circuit Judges.

Mathews, Circuit Judge:

This appeal is from (1) an order which, on June 29, 1939, refused to modify a default judgment in an action for damages for conversion of property and (2) an order which on September 26, 1939, denied a motion to vacate the judgment, set aside the entry of default and permit answers to be filed.

The action was brought by appellee, M. E. Heiser, against Leonard Woodruff and others in the District Court of the United States for the Southern District of California. Appellee is a British subject. Woodruff is a citizen of California and a resident of the Southern District thereof. One of Woodruff's co-defendants is a citizen of Nevada. The others are citizens of California. The amount in controversy exceeded, exclusive of interest and costs, the sum of $3,000. The District Court has jurisdiction of the action.

The action was commenced on July 11, 1935. Summons was issued on that day, but, being unable to find the defendants, the marshal returned that summons unserved. Another summons was issued on April 21, 1937. On

January 25, 1939, E. M. Daniels was specially appointed by the court to serve the summons and complaint on Woodruff,[1] but Daniels never made such service. The marshal, on January 31, 1939, did make such service by leaving copies of the summons and complaint at Woodruff's dwelling house and usual place of abode with a person of suitable age and discretion then residing therein.[2]

On February 23, 1939, it appearing by affida it and otherwise that Woodruff had failed to plead or otherwise defend, the clerk entered his default.[3] Thereafter appellee applied to the court for judgment. The court, on March 20, 1939, concluded a hearing to determine the amount of damages and, at the conclusion thereof, entered judgment against Woodruff for $164,000, with interest and costs.[4] From that judgment no appeal was taken.

On March 29, 1939, Woodruff filed a motion to vacate the judgment, set aside the entry of default and permit him to answer. The motion was heard on April 10, 1939, and, by an order entered on June 8, 1939, was denied. From that order no appeal was taken.

On May 25, 1939, appellee and Woodruff stipulated in open court that the court might hear evidence as to the value of the converted property, and that, if the value thereof was found to be less than the amount ($164,000) awarded by the judgment, the judgment might be modified accordingly. On June 29, 1939, a hearing was had, pursuant to the stipulation. Both parties (appellee and Woodruff) appeared and participated in the hearing. The court

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[1]Federal Rules of Civil Procedure, Rule 4(c).

[2]*Id.*, Rule 4(c), (d) (1).

[3]*Id.*, Rule 55(a).

[4]*Id.*, Rule 55(b) (2).

found that the value of the property was the amount awarded by the judgment. Accordingly, by an order entered on June 29, 1939, the court refused to modify the judgment.

On July 5, 1939, Woodruff was adjudged a bankrupt. On July 20, 1939, P. M. Jackson was appointed and qualified as trustee in bankruptcy of Woodruff's estate. On September 26, 1939, pursuant to written notice theretofore served and filed Jackson and Woodruff (hereafter called appellants) moved the court to vacate the judgment in the law action, set aside the entry of default and permit the filing of answers by appellants. The motion was heard and, by an order entered on September 26, 1939, was denied. From that order and the order of June 29, 1939, this appeal was taken on September 29, 1939.

The order of June 29, 1939, was not a final decision within the meaning of Section 128 (a) of the Judicial Code, 28 U. S. C. A., Section 225 (a), and was not appealable.

Republic Supply Co. v. Richfield Oil Co., 9 Cir., 74 F. (2d) 909, 910; Benson v. United States, 9 Cir., 93 F. (2d) 749, 751.

A claimed ground of appellants' motion of September 26, 1939, was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud. Thus, by their motion, appellants instituted what was, in effect, an independent action or proceedings. Hence, the order of September 26, 1939, was a final decision, within

the meaning of Section 128(a) of the Judicial Code, 28 U. S. C. A., Section 225(a), and was appealable. Stevirmac Oil Co. v. Dittman, 245 U. S. 210, 214, 216; Rust v. United Waterworks Co., 8 Cir., 70 F. 129, 132.

The District Court properly refused to vacate the judgment as having been obtained without valid service of process. For, as previously shown, service was made on January 31, 1939, in accordance with Rule 4 of the Federal Rules of Civil Procedure then in effect, and was, we think, valid service. Furthermore, even if not validly served with process Woodruff, by entering into the stipulation of May 25, 1939, and by participating in the hearing of June 29, 1939, waived such service and voluntarily submitted himself to the jurisdiction of the court.

The charge that the judgment was obtained by fraud was denied and not proved. That ground of appellants' motion appears to have been abandoned. Other claimed grounds of the motion were that the judgment was prematurely entered and was otherwise erroneous; that the complaint did not state a cause of action and was otherwise defective; and that the complaint showed on its face that the action was barred. These were matters which, if true, might have been urged as defenses or, if the judgment had been appealed from, as grounds for reversal. They were not grounds on which, without more, the court rendering the judgment could properly vacate it.

As further (and final) ground of their motion, appellants stated that they, Jackson and Woodruff, had a good defense to the action, but were prevented from present-

ing it by reason of fraud, accident, surprise and excusable neglect. The statement that Jackson had a defense to the action and was prevented from presenting it was obviously untrue, as he was not a party to the action. As to Woodruff, the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it. In this, we cannot say that the court erred; much less that it abused its discretion.

The appeal, insofar as it is or purports to be an appeal from the order of June 29, 1939, is dismissed.

The order of September 26, 1939, is affirmed.

WILLIAM DENMAN,
United States Circuit Judge.

CLIFTON MATHEWS,
United States Circuit Judge.

ALBERT LEE STEPHENS,
United States Circuit Judge.

[Filed April 30, 1940.]

Opinion of Tenth Circuit (in Case No. 3052).

United States Circuit Court of Appeals, Tenth Circuit.

Willie Mae Woodruff; Howard L. Woodruff; Marguerite Woodruff; Leonard Woodruff, Jr.; Ida Belle Woodruff; and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 3052—May Term, 1945.

[August 11, 1945.]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before Phillips, Bratton and Huxman, Circuit Judges.

Bratton, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant

Woodruff failed to answer or otherwise plead in the case; plaintiff submitted evidence; and on March 20, 1939, the court entered judgment against such defendant for $164,000, together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors, filed objections to the claim of Heiser; and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal steps as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit Woodruff to answer, and permit the trustee to intervene. The court denied the motion, Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The

referee later heard evidence and disallowed the claim in toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted res judicata of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U. S. C. A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act; and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state, its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, or the subordination of claims to other claims. Pepper v. Litton, 308 U. S. 295; Prudence Realization Corp. v. Geist, 316 U. S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an alleged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from

a simple contract debt, or an unliquidated claim, into a judgment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection." Pepper v. Litton, *supra*. And in the absence of a well grounded plea of *res judicata*, the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real debt of the bankrupt. Pepper v. Litton, *supra*.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Woodruff expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him constitutes *res judicata* here to that extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, *supra*.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the

rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Woodruff to vacate the judgment, by the motion of the trustee and the defendant Woodruff to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, *supra*. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, *supra*, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions, in accordance with Rule of Civil Procedure 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may

be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310; Kelley v. Everglades Drainage District, 319 U. S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

Huxman, Circuit Judge, Dissenting:

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is *res judicata*.

It is of course well settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment, but when the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels and by the use of

perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment, and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the

judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on July 20, 1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud . . . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original

judgment by the use of false and fraudulent testimony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious, false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to introduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. (2d) 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one

attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal. Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is *res judicata* not only as to those matters which were decided, but also as to all matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U. S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

A true copy.

Attest: ROBERT B. CARTWRIGHT,
Clerk U. S. Circuit Court of Appeals, Tenth Circuit.

[SEAL.] By GEORGE A. PEASE,
Chief Deputy Clerk.

[Exhibit C-1. R. Vol. I. p. 70.]

Order.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff vs. Leonard Woodruff *et al.*, Defendants. No. 7256-C.

Motion of defendant Leonard Woodruff for order of this court to vacate and set aside the default and the default judgment entered herein against the said defendant, and to permit the said defendant to file his answer herein; having come on regularly for hearing on the 10th day of April, 1939, at 10 o'clock A. M. of said day, the Honorable Judge Geo. Cosgrave presiding and Ames Peterson, Esq. appearing as counsel for the defendant Leonard Woodruff and Leonard J. Meyberg, Esq. appearing as counsel for the plaintiff herein, and the court being fully advised in the premises, and the said Ames Peterson, Esq., counsel for said defendant Leonard Woodruff, having applied to the court for permission to file additional points and authorities and the court having allowed the said defendant Leonard Woodruff time within which to file the same and having allowed time to the plaintiff within which to answer the same, and the said parties having filed their additional points and authorities and additional affidavits, the said parties having appeared before the court on the 25th day of May, 1939, at the hour of 2 o'clock P. M., the defendant Leonard Woodruff by his counsel Ames Peterson, Esq., and the plaintiff by his counsel Leonard J. Meyberg, Esq., and the said parties having, through their said respective counsels, stipulated that all affidavits filed be a part of the record, and the court being fully advised in the premises, and the matter having been submitted, and no adverse interest appearing.

It Is Hereby Ordered that the motion of defendant Leonard Woodruff for the order of this court to vacate and set aside the default and the default judgment heretofore entered herein against the said defendant Leonard Woodruff and for order of this Court permitting said defendant Leonard Woodruff to file his answer herein, be, and the same is, hereby denied.

The parties appearing before the court on May 25, 1939, through their said respective counsel, to-wit: Plaintiff Leonard J. Meyberg, Esq., and defendant Leonard Woodruff by Ames Peterson, Esq., having further stipulated that on Monday, June 12, 1939, at 2 o'clock P. M., or as soon thereafter as counsel may be heard, the said Judge of the Court herein may hear evidence on behalf of the plaintiff and evidence on behalf of said defendant Leonard Woodruff as to the value of the property of plaintiff herein, for which damages were allowed in the judgment herein against the said defendant, which said hearing shall be without a jury, a jury being expressly waived by the parties, and the issue at such hearing to be limited to ascertaining by the Judge of the said Court, from such evidence to be presented by the said parties under the rules of evidence of the said Court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment herein against the said defendant, as in said complaint alleged, and that should the said Judge of the said Court, after such hearing, find from such evidence that the value of the said property with interest thereon at 7% per annum from May 13, 1929, to date of entry of judgment, is less than the sum or amount of the judgment entered herein against said defendant, Leonard Woodruff, then and in such event the said judgment entered herein

may be modified and reduced in amount by said Judge of said Court to such sum as the said Judge of this Court may find from such evidence, as aforesaid, together with costs as in said judgment stated, and any additional costs which the Court may find proper, and with interest thereon, and it was further stipulated between the said respective counsel representing plaintiff and said defendant Woodruff that plaintiff waives as against said defendant Woodruff his claim to exemplary and punitive damages of $150,000.00 set up in his first cause of action in his complaint, page 22, paragraph XV, lines 6 to 9, and his claim for damages of $100,000.00 for loss of rights and profits in his complaint on page 24, paragraph III, lines 21 to 24, and his claim for exemplary and punitive damages of $150,000.00 in his second cause of action in said complaint, page 24, paragraph IV, lines 26 to 30, and the claim for punitive damages in the sum of $150,000.00 set up in the third cause of action, page 28, paragraph IV, lines 11 to 14, and that such exemplary or punitive damages shall not be considered by the Judge in ascertaining the value of the said property, and notice of such hearing having been expressly waived.

It is the intent and purpose of this order that such competent evidence as either party desires to present be received by the said Court at said hearing and considered by it in determining the actual value of the property which the plaintiff alleges was converted by the defendants.

Now, Therefore, It Is So Ordered.

Dated: June 8, 1939.

GEO. COSGRAVE,

District Judge.

Referee's Certificate on Review.

To the Hon. Eugene Rice, District Judge:

154 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order was made disallowing the unsecured claim of M. E. Heiser, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser.

A claim was filed by said M. E. Heiser against the bankrupt estate in the sum of $278,631.71, the consideration as set forth in the proof of debtor being: "Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $184,000.00, by false pretenses and false representations through willful, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon, at the rate of 7% per annum, amounting to $113,036.71 and costs of $1,595.00 fixed by and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein, as plaintiff, and against Leonard Woodruff, bankrupt herein, as defendant, certified copy of which judgment of said United States Court is marked Exhibit 'A', is hereto annexed and referred to as a part hereof." A supplement to proof of claim of M. E. Heiser was thereafter filed.

Objections to claim of M. E. Heiser were filed by Leonard J. Woodruff, debtor, a petition for arrangement made under Chapter 11 having been filed by said Woodruff and an order made staying administration. Objections to the Heiser claim were also filed by Wille May Woodruff,

Ida Belle Woodruff, Howard W. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff, Jr., creditors. Answers to the objections were filed by M. E. Heiser. Amendments to their objections to Heiser claim were filed by Ida Belle Woodruff and Wille May Woodruff.

The questions presented on this review are:

1. Does the default judgment of March 20, 1939, against Leonard Woodruff in favor of M. E. Heiser, the judgment of September 26, 1939, denying the Motions of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff, Debtor, and the decision of the Circuit Court of Appeals affirming the judgment of September 26, 1939, prevent the Bankruptcy Court from considering the underlying claim of M. E. Heiser and allowing or disallowing in whole or in part the claim of said M. E. Heiser as filed in the bankruptcy court?

155 2. Is the evidence produced by the objectors in opposition to the claim of M. E. Heiser sufficient to defeat such claim?

RES ADJUDICATA.

The original suit of Heiser vs. Woodruff *et al* was filed in the California Court on July 11, 1935. Woodruff was served with summons on January 31, 1939 and on the 23rd day of February, 1939, the default of Woodruff was entered by the Clerk of said Court.

On March 20, 1939, the judgment which is the basis of the Heiser claim was entered and on March 29, 1939, a Motion was filed by Woodruff to set aside the default judgment, and on June 8, 1939, an order was made denying Woodruff's Motion but providing that hearing be held to determine value of the property (gems); on June 29, 1939,

the value of the property was fixed at the amount fixed in the judgment.

On July 5, 1939, Woodruff filed voluntary petition and was adjudged bankrupt the same day.

On August 23, 1939, upon application of P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, an order was made by the Referee in Bankruptcy authorizing and directing said Trustee to take such action as might be necessary to have set aside the default judgment.

On the 28th day of September, 1939, the Motion of the Trustee was denied as was also the Motion of Leonard J. Woodruff. An appeal from the order of June 29, 1939; and from the order of September 26, 1939, was taken and Circuit Court of Appeals of the Ninth Circuit dismissed the appeal as to order of September 29, 1939 and affirmed the order of September 26, 1939. The decision of the Circuit Court of Appeals is reported in 111 Fed. (2d) 310.

Objectors' Exhibit DD, 7-27-42, is a certified transcript of Record, upon appeal from the District Court of the United States for the Southern District of California, Central Division, in No. 9356 United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, appellants, vs. M. E. Heiser, appellee.

156 This Transcript of Record (Ex. DD) apparently is a complete record of the proceeding in which Heiser obtained the default judgment and also the proceeding in connection with the Motion of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff.

Objectors' Ex. CC, 7-27-42, is a Reporter's Transcript of Argument on Motion to Vacate Judgment and set aside

Default on September 26, 1939. This is the Motion to set aside default judgment filed by P. M. Jackson, Trustee, and Leonard Woodruff.

Objectors' Ex. RR is a transcript of hearing to determine value of the gems after the entry of the default judgment in favor of Heiser, against Woodruff.

UNDERLYING CLAIM.

Objectors produced a large amount of evidence in support of their objections. Depositions of numerous witnesses were taken. The claimant offered no evidence on this point but relied on his judgment.

M. E. Heiser came to San Francisco from Australia the end of 1914 or the early part of 1915 on account of the Panama Pacific Exposition at San Francisco.

According to the testimony of M. E. Heiser the uncut gems ($164,000.00) of uncut sapphires, etc.) were brought to San Francisco in 1915 or latter part of 1914 and amounted to several tons. Heiser testified at the hearing to re-determine value in Heiser v. Woodruff in the District Court of California: "I represented the Queensland Government at the Panama Exposition as their expert cutter for demonstration in 1915 in San Francisco cutting to demonstrate how the gems were cut and how they were mined." In his deposition in this proceeding he stated that he was not the official representative of any Government.

The depositions of three Australian officials were taken by objectors. As shown by these depositions Heiser was not an official representative of the Australian Government nor of any State Government of Australia. That
157 Heiser obtained permission to operate a small lapidist's bench in the Australian Pavilion. That

"one of the conditions of Mr. Heiser's tenancy at the Australian Pavilion was that no articles were to be sold by him therein. As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opals), the *Australian* Commissioners withdrew his permit to exhibit within the Australian Pavilion."

Heiser had his space in the Australian Pavilion about a week.

According to Heiser's testimony when he discontinued operations at the Exposition the cheaper material was stored in warehouse and other places and the better materials in the Wells, Fargo Bank in San Francisco.

All this material according to Heiser's testimony (being the $164,000.00 worth of uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles. In Los Angeles it was stored in U. S. National Bank, Los Angeles, and none of the material was removed by anyone until it was removed under attachment in case of Woodruff vs. Golden State Gem Company.

Heiser went to Los Angeles in July, 1928, and shortly thereafter met Woodruff through one Calvin Smith who was connected with the Golden State Gem Company of California, a California Corporation. The Golden State Gem Company of Nevada, a Nevada, Corporation, was thereafter organized. Woodruff appears to have owned no stock in either of these corporations. Woodruff did loan $10,000.00 to Smith in addition to amount then owing to him by Smith.

Heiser in August, 1928, left Los Angeles for Europe and did not return to Los Angeles until September or October, 1930.

In 1929 Woodruff filed suit against Golden State Gem Company of California and Golden State Gem Company of Nevada and the material in the U. S. National Bank was attached. The material was contained in thirty six (36) sacks. At the sale Woodruff bought thirty five (35) sacks for $1000.00. One sack was purchased by Louis Oreck for his son. Oreck testified that he selected what he *though* was the best sack of material but that it proved later to be of no value.

While Heiser was in Europe the Golden State Gem Company of California was adjudged bankrupt. A claim was filed in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother in law, which was disallowed and upon appeal the appeal dismissed.

158 I hand up herewith for the information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs filed with Referee prior to order disallowing Heiser claim:

2. Brief on behalf of objectors to the claim of M. E. Heiser.

3. Reply brief in behalf of the claim of M. E. Heiser.

4. Petition for review.

5. Copy of order disallowing M. E. Heiser claim.

6. Copy of proof of debt of M. E. Heiser and Supplement thereto.

7. Objections of debtor, Leonard Woodruff, to claim of M. E. Heiser.

8. Answer to objections of Leonard J. Woodruff, by M. E. Heiser.

9. Objections of Wille May Woodruff to claim of M. E. Heiser, and Amendment thereto.

10. Answer of M. E. Heiser to objections of Wille May Woodruff.

11. Objections of Ida Belle Woodruff to claim of M. E. Heiser and Amendment thereto.

12. Answer by M. E. Heiser to objections of Ida Belle Woodruff.

13. Objections of Howard Woodruff to claim of M. E. Heiser.

14. Answer of M. E. Heiser to objections of Howard Woodruff.

15. Objections of Margueritte Woodruff to claim of M. E. Heiser.

16. Answer of M. E. Heiser to objections of Margueritte Woodruff.

17. Objections of Leonard Woodruff, Jr., to claim of M. E. Heiser.

18. Answer of M. E. Heiser to objections of Leonard Woodruff, Jr.

19. Transcript of Hearing before Referee on objections to Heiser claim.

The following depositions taken in behalf of objectors:

20. Deposition of M. E. Heiser.

21. Deposition of D. K. Stern.

22. Deposition of E. A. Lobree.

159 23. Deposition of Jefferson J. Graves.

24. Deposition of C. N. Olson, H. A. Dewing, C. W. McClain, J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck, and Claire E. Cone.

The following three (3) depositions were taken in Australia:

25. Deposition of Leo Joseph Jones.

26. Deposition of Adolphus Arnold Staines.

27. Deposition of David Barnett Edward.

28. Exhibits.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944, John H. Pugh, Clerk, U. S. District Court.

Order Authorizing and Directing Trustee to Institute Legal Actio to Vacate and Set Aside Judgment of M. E. Heiser Against Bankrupt.

Now on this 23d day of August, 1939, there having been presented to the court the application of the trustee for authority to institute *legal action* to vacate and set aside judgment of M. E. Heiser against bankrupt and for authority to employ counsel to represent said bankrupt in said matter, and there also being presented an application of creditors other than M. E. Heiser, requesting that this court direct the trustee to take said legal steps, and the court after being fully advised in the matter, finds that a default judgment was rendered in the United States District Court in and for the Southern District of California, Central Division, in which M. E. Heiser was plaintiff and the bankrupt, Leonard J. Woodruff, was defendant, same being case No. 7256-C in said court, and said judgment being for the sum of $278,621.71.

The court finds that said judgment represents a large part of indebtedness of the bankrupt herein and that said judgment being rendered by default, that the matters and things that the bankrupt claims to be a complete defense to said action has never been presented to the court, and in the judgment of this court the merits of said matter and legality of said judgment should be inquired into by court of proper jurisdiction.

The court further finds that the time within which trustee may legally attack said judgment will expire on or about September 20, 1939, and for said reasons, prompt and immediate steps should be taken to test the legality of said judgment, and that said trustee should be ordered and directed to take such legal steps as may be proper to vacate, set aside or to avoid said judgment.

The court further finds that the litigation necessary to test said judgment will necessarily have to be conducted in the state of California where said judgment was rendered and that the trustee should be authorized to employ a capable and reputable attorney who is familiar with the practice in the state of California and who is located in Los Angeles where said judgment was rendered in order to minimize the expense as much as possible, and said trustee has applied to this court for authority to employ Francis B. Cobb, attorney of law of Los Angeles, who is reputed to be a capable and experienced practitioner of the law in California, and the court finds that said Francis B. Cobb is not disqualified to represent said trustee and that he represents no interest that would conflict with his duties for said trustee in this matter, and that he should be employed as attorney for the trustee in this matter.

It Is Therefore Ordered, Adjudged and Decreed by the Court that the trustee, P. M. Jackson, be and is hereby authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside and to avoid the judgment of M. E. Heiser against the bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, said case being No. 725-C in said court.

It is the further order and judgment of the court that said trustee be authorized to employ as his counsel in this matter Francis B. Cobb, a member of the firm of Cobb, Campbell, & Kelly, attorneys of Los Angeles, California.

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELLE WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF RESPONSE

H. A. LEDBETTER,
Ardmore, Oklahoma,
Counsel for Respondents.

THOS. W. CHAMPION,
LOUIS A. FISCHL,
Ardmore, Oklahoma
Of Counsel.

Sprekelmeyer, Ardmore

INDEX

Page

Res Judicata 1

A 1

Authorities Cited:

Baldwin vs. Iowa State Traveling Men's Association, 283 U. S. ...

Beneficial Loan Co. vs. Noble (10th Cir.), 129 Fed. 2d 425 2

Boynton vs. Ball, 121 U. S. 475, 30 L. Ed. 985 3

Butzel vs. Webster Apt. Co. (6th Cir.), 112 Fed. 2d 362 3

Chambers vs. Continental Trust Co., 235 Fed. 441, 239 Fed. 1020 7

Chandler vs. Thompson (7th Cir.), 120 Fed. 940 3

Hanssen vs. Wengren (10th Cir.), 121 Fed. 2d 1011 2

In Re Avery (6th Cir.), 114 Fed. 2d 768 3

In Re Continental Engine Co. (7th Cir.), 234 Fed. 58 3

In Re Farmers' Dairy Asso., 234 Fed. 118, 240 Fed. 121 7

In Re James A. Brady Foundry Co. (7th Cir.), 3 Fed. 2d 437 3

In Re Thompson (D. C.), 276 Fed. 313 3

Lesser vs. Gray, 236 U. S. 70, 59 L. Ed. 471 2

Local Loan Co. vs. Hunt, 292 U. S. 234, 78 L. Ed. 1230 2

McCullough vs. Davenport Sav. Bank, 226 Fed. 309 7
522, 75 L. Ed. 1244 8

Pepper vs. Litton, 308 U. S. 295, 84 L. Ed. 248 1

Prudence Realization Corporation vs. Geish, 316 U. S. 89, 86 L. Ed. 1293 2

United States Fidelity and Guaranty Co. vs. Bray, 225 U. S. 205, 56 L. Ed. 1055 1

B 9

The Proceedings on Behalf of the Trustee in the California Courts.

Authorities Cited:

Aetna Life Ins. Co. vs. Eaton, (2nd Cir.), 43 Fed. 2d 711 9

Antonsen vs. Pacific Container Co., 120 Pac. 2d 148 10

Blank vs. Blank, 13 N. E. 615 11

Cohen vs. Levy, 49 App. Div. 638, 62 N. Y. S. 1060 11

De Sollar vs. Rouseombe, 158 U. S. 216, 39 L. Ed. 956 9

INDEX

Page

Estudillo et al vs. Security Loan and Trust Co. of So. Cal., 87 Pac. 19 10
Estudillo et al vs. Security Loan and Trust Co., 149 Cal. 556, 87 Pac. 19 11
Hammond Lumber Co. vs. Gilkey, 7 Pac. 2d 724 (Cal.) 10
In Re Powers (7th Cir.), 115 Fed. 2d 69 9
Mercoid Corporation vs. Mid-Continent Investment Company, 320 U. S. 660, 88 L. Ed. 376 12
Molen vs. Bussi et al (Cal.), 5 Pac. 2d 450 9
Monroe vs. Monroe, 21 N. Y. S. 655 11
Nuckolls vs. Bank of Cal., 74 Pac. 2d 264 (Cal.) 10
Passailaigue vs. Herron et al (5th Cir.), 38 Fed. 2d 775 9
Resnick vs. Parryzek, 134 N. E. 350, 34 C. J. 387 10
Russell vs. Place et al, 94 U. S. 606, 24 L. Ed. 214 9
St. Louis Southwestern Ry. Co. vs. Bolinger and Co. (5th Cir.), 17 Fed. 2d 924 9
Steele vs. Bliss et al, 170 Mich. 175, 135 N. W. 931 11
Tobias vs. Tobias, 193 Ill. A. 95 11
U. S. for use of Kantor vs. Mutual Const. Co., 3 F. R. D. 227 10
Williams vs. MacDonald et al, 180 Cal. 546, 182 Pac. 29 9

Statutes Cited:

34 C. J. 387 11
34 C. J. 1518 10

C 13

A Court of Equity Has Jurisdiction to Grant Relief Against Judgment Obtained by Wilful and Corrupt Perjury.

Authorities Cited:

Boring vs. Ott, 138 Wis. 260, 119 N. W. 865 14
Donovan vs. Miller, 88 Pac. 82 (Idaho) 14
Elkhorn Valley Bank vs. Marley, 85 N. W. 846 (Neb.) 14
El Reno Mutual Fire Ins. Co. vs. Sutton, 41 Okla. 297, 137 Pac. 700 13
Freese vs. Huhmel, 37 Pac. 458 (Ore.) 14
Hazel-Atlas Glass Co. vs. Hartford-Empire Co., 322 U. S. 237, 88 L. Ed. 1250 13
Marshall vs. Holmes, 141 U. S. 589, 35 L. Ed. 870 13
Munro vs. Callahan, 55 Neb. 75, 75 N. W. 151 13
McBride vs. Cowen, 216 Pac. 104 (Okla.) 14
Publicker vs. Shallcross et al, 106 Fed. 2d 949 (3rd Cir.) 13
U. S. vs. Throckmorton, 98 U. S. 61, 25 L. Ed. 93 13
Vacuum Oil Co. vs. Brett, 294 Pac. 638 (Okla.) 14
Wirth vs. Weigand, 122 N. W. 714 (Neb.) 14

Conclusion 14

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELLE WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF RESPONSE

The respondents respectfully submit this response to petition for writ of certiorari and brief in support thereof.

I

RES JUDICATA

A

The Bankruptcy Court is a court of exclusive jurisdiction:

United States Fidelity & Guaranty Co. vs. *Bray*, 225 U. S. 205, 56 L. Ed. 1055;

Pepper vs. *Litton*, 308 U. S. 295, 84 L. Ed. 248;

Local Loan Co. vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1230;

Beneficial Loan Co. vs. *Noble* (10th Cir.), 129 Fed. 2d 425;

Hanssen vs. *Wengren* (10th Cir.), 121 Fed. 2d 1011.

It is essentially a court of equity and its proceedings inherently proceedings in equity. Authorities cited and *Prudence Realization Corporation* vs. *Geish*, 316 U. S. 89, 86 L. Ed. 1293.

The jurisdiction of Bankruptcy courts is exclusive of all other courts with respect to the allowance and disallowance of claims. Authorities cited.

This exclusive jurisdiction gives bankruptcy courts the power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. *Lesser* vs. *Gray*, 236 U. S. 70, 59 L. Ed. 471; *Pepper* vs. *Litton*, supra.

Bankruptcy courts have exercised equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, substance will not give way to form, technical considerations will not prevent substantial justice from being done. These equitable considerations are exercised in the allowance or disallowance of claims. *Pepper* vs. *Litton*, *Beneficial Loan Co.* vs. *Noble*, supra.

The fact that debt or claim has been reduced to judg-

ment does not affect its character so far as provability in bankruptcy is concerned:

Boynton vs. *Ball*, 121 U. S. 457, 30 L. Ed. 985;

Pepper vs. *Litton*, supra;

In Re James A. Brady Foundry Co. (7th Cir.), 3 Fed. 2d 437;

In Re Continental Engine Co. (7th Cir.), 234 Fed. 58;

Butzel vs *Webster Apt. Co.* (6th Cir.), 112 Fed. 2d 362;

In Re Avery (6th Cir.), 114 Fed. 2d 768;

Chandler vs. *Thompson* (7th Cir.), 120 Fed. 940;

In Re Thompson (D. C.), 276 Fed. 313;

Local Loan Co. vs. *Hunt*, supra.

Petitioner's judgment was obtained by default. Service was obtained upon debtor by leaving summons with a member of debtor's family (R. 214). Debtor was away from home at the time and did not return until after his default had been entered. Judgment was entered on the testimony of petitioner (R. 350).

Judgment was entered March 20, 1939 (R. 10). 9 days later debtor served notice of his motion to vacate and tendered answer (R. 220-1). This was denied (R. 70).

In connection with this motion to vacate it is asserted on page 7 of petitioner's brief "Woodruff appeared and moved to vacate the judgment on the ground (among others) that it had been procured by perjury as to values of the gems". We call this Court's attention to the motion to vacate (R. 27) and submit that it contains no such allegations or grounds of relief.

It was stipulated that the District Court rendering the judgment should hear evidence as to the value of the property allegedly converted. This apparently upon the theory that no evidence of value had been previously heard. Upon hearing this evidence the Court let the judgment stand in the same amount as originally rendered (R. 275). In connection with this hearing it is asserted on pages 7 and 10 that "over 10 days of trial evidence was offered", "over 10 trial days". "After the 10 day hearing". The hearing referred to to determine values was held June 19, 22, 23, 27 and 28, 1939 (R. 680). Those who participated in the hearing know that only a portion of the Court time of each of these 5 days was occupied with this hearing.

We believe it pertinent that this hearing proceeded upon the theory that the petitioner was possessed of property of the kind and character he alleged was converted. The Court endeavored to determine the value of such property, assuming its existence and conversion. On the other hand, in the hearing before the Referee the respondents contended that the petitioner was never possessed of such property and that the allegations with respect to its possession were untrue.

In endeavoring to ascertain the source and character of the property possessed by petitioner, respondents developed that on August 9, 1928, he had shipped from San Francisco to Los Angeles "36 sacks mech corundum (ore)," weight 4325, value $500.00. (See bill of lading R. 1117).

On February 20, 1930, petitioner filed a claim in the matter of the Bankruptcy of the Golden State Gem of California at Los Angeles for the same material then valued at $30,250.00 (R. 649). The claim was denied (R. 1188). The claim disappeared (R. 1189, 1142). He testified in April, 1932, in support of this claim that he brought these gems with him from Australia in July, 1928 (R. 1048). The claim which had been filed by his brother-in-law under a power of attorney from the petitioner was incorrect and that he actually had 33,200 ounces of gems, then valued at $99,000.00 (R. 1070-71). Within thirty days after giving this testimony he sued Bankrupt in the California District Court, case 5587J (R. 1040-43). Therein he listed the same gems at 39,400 ounces, value $164,000.00. This suit was dismissed for want of prosecution. Respondents also developed petitioner's testimony given in case No. 238-348 in the Superior Court of San Francisco in 1935, (R. 1079), wherein he identified the same material as to quantity at 44,400 ounces, and also introduced in evidence the testimony of the petitioner given before the California District Court on the hearing to determine values when he identified the claimed gems at 39,400 ounces and value at $190,800.00 (R. 1123,25). All quantities and values were fixed as of the date of the alleged conversion.

The respondents also developed the fact that upon the hearing to determine values, petitioner testified that he had mined this material in Australia and loaned it to the

Australian Government for exhibition at the Panama Pacific Exposition at San Francisco in 1915; that the gems were shipped by the Australian Government to San Francisco and were there exhibited, petitioner being in charge of the exhibit for said Government. After the Exposition closed, petitioner stored the gems in the Wells Fargo Nevada Bank, safe deposit department, at San Francisco, where they remained from 1915 to 1928 when they were taken out and shipped to Los Angeles (R. 1129-33).

The petitioner repeated this evidence when his deposition was taken by the respondents in this case (R. 755-9).

Respondents proved by the depositions of the officials of the Australian Government in charge of its exhibition at the Exposition and of the records pertaining thereto that petitioner had no connection therewith so far as the Australian Government was concerned, did not loan any materials to that Government for exhibition at the Exposition (R. 957, 964, 976) and did not have any such materials on exhibition there. And from the official records of the Queensland Government (R. 965) that the total like gems exhibited by that Government at the Exposition did not exceed in quantity 150 ounces and value $5000.00, as contrasted with petitioner's various claims of from 32,000 ounces to 44,000, valued all the way from $500.00 to $190,800.00; also that such minerals were valued at $8.00 to $15.00 per ounce (R. 968-73) as contrasted with petitioner's fantastic values of $40.00, $50.00 and $60.00 an

ounce. It was proven by bank officials that he had no deposit in the Wells Fargo Nevada Bank at San Francisco from 1915 to 1928 or any other time (R. 669).

The respondents also proved up the letter shown at page 934-5 of the record written at a time when the petitioner claimed to have had the converted merchandise on hand and in storage in the San Francisco bank. They also proved that such material was a critical war material from 1914 to 1918; also that from 1915 to 1939 petitioner made frequent trips to Australia for the purpose of getting such merchandise to sell.

These are but a few of the pertinent facts developed by the respondents in support of their objections to petitioner's claim and which the Referee found sufficient in equity and justice to demand its disallowance. The entire record covers more than 800 pages of the printed transcript.

The Referee is the only court that has heard these facts. Only before the Referee were the issues of fraud, perjury and want of merit raised, urged and heard.

The disallowance of the claim by the Referee carries with it a presumption of correctness and sufficiency of evidence to sustain his findings:

In Re Farmers' Dairy Asso., 234 Fed. 118, 240 Fed. 121;

Chambers vs. *Continental Trust Co.*, 235 Fed. 441, 239 Fed. 1020;

McCullough vs. *Davenport Sav. Bank*, 226 Fed. 309.

Inherent in this presumption is the finding that appellee's claim is not founded upon a real debt and is without merit; that debtor was not indebted to him at the time judgment was rendered; that his purported cause of action for fraud and conversion was fictitious and that his judgment was obtained by fraud and upon perjured testimony. Shall a claim based upon such judgment be permitted to participate in the distribution of assets by a bankruptcy court?

Creditors are not seeking to vacate and set aside the judgment in the bankruptcy proceeding. Their attack is directed at appellee's claim. If his claim is disallowed the judgment still remains in force. Being based upon fraud and conversion, there may be some question as to whether it can be discharged in bankruptcy. The order of the Referee disallowed appellee's claim. It did not purport to disturb his judgment. The order of the District Court allows his claim—not his judgment.

Appellee's judgment is not protected by the Full Faith and Credit Clause of the Federal Constitution. *Baldwin* vs. *Iowa State Traveling Men's Association*, 283 U. S. 522, 75 L. Ed. 1244. Rules of State courts and decisions of State Appellate courts subversive of the general purpose of Bankruptcy Act are not controlling upon Federal Courts. *Local Loan Co.* vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1231.

It will therefore be seen that as respects the jurisdiction of the Bankruptcy court to inquire into the judgment underlying petitioner's claim the decision of the Circuit

Court is correct and in harmony with the cited cases from this Court, the Tenth and other Circuit Courts and the fundamental concepts of equity jurisprudence underlying the administration of the Bankruptcy Act.

B

THE PROCEEDINGS ON BEHALF OF THE TRUSTEE IN THE CALIFORNIA COURTS

But it is urged as ground for the writ that the proceedings by the trustee in the California Courts are res judicata of all matters urged by the respondents in their objections to the allowance of the claim. This could only be so if the objections urged to the claim by respondents were urged by the trustee, heard by the California courts and there decided upon their merits. *Russell* vs. *Place et al*, 94 U. S. 606, 24 L. Ed. 214.

See also:

De Sollar vs. *Hauscombe*,
158 U. S. 216, 39 L. Ed. 956;

Williams vs. *MacDonald et al*.
180 Cal. 546, 182 Pac. 29;

Molen vs. *Bussi et al* (Cal.), 5 Pac. 2d 450;

In Re Powers (7th Cir.), 115 Fed. 2d 69;

St. Louis Southwestern Ry. Co. vs. *Bolinger & Co.*
(5th Cir.), 17 Fed. 2d 924;

Aetna Life Ins. Co. vs. *Eaton*,
(2nd Cir.), 43 Fed. 2d 714;

Passailaigue vs. *Herron et al*
(5th Cir.), 38 Fed. 2d 775.

The proceedings on behalf of the trustee are shown at pages 285, 304, 656 and 987 to 1012 of the record. At pages 1014-16 are shown matters which were urged before the Ninth Circuit Court of Appeals by the trustee in his appeal from the judgment of the District Court.

The trustee's motion to vacate the California judgment and for leave to intervene, file an answer and be heard on the merits of the action was brought under Section 473 of the California Code of Civil Procedure and under Rule 60-B of the Federal Rules of Civil Procedure. Proceedings for relief under the California Statute and Rule 60-B do not bar a subsequent action to set aside the judgment:

Estudillo et al vs. *Security Loan & Trust Co. of So. Cal.*, 87 Pac. 19;
Antonsen vs. *Pacific Container Co.*, 120 Pac. 2d 148;
Resnick vs. *Parryzek*, 154 N. E. 350, 34 C. J. 387;
Hammond Lumber Co. vs. *Gilkey*, 7 Pac. 2d 724 (Cal.);
Nuckolls vs. *Bank of Cal.*, 74 Pac. 2d 264 (Cal.);
U. S. for use of Kantor vs. *Mutual Const. Co.*, 3 F. R. D. 227.

Even if such proceedings might be held to be in the nature of a final judgment binding upon the parties, the Court will look to the pleadings, proceedings and evidence in the case to determine what matters were urged, heard, tried and decided. For only as to such matters would the judgment be final and binding. 34 C. J. Section 1518 (b) page 1047.

The Referee was first of the opinion that the proceedings by the trustee in the California Court barred his right to hear the objections to the claim. But upon being shown the proceedings in the California Court on behalf of the trustee, which disclosed that the matters there urged by the trustee as grounds for the vacation of the judgment were matters appearing upon the face of the record and that the contentions that the bankrupt was not indebted to the petitioner in any amount, that the material allegations of the complaint were untrue, that the judgment was without merit, did not represent a real debt and was obtained through the use of perjured testimony given by the petitioner, were not raised by the trustee, the Referee reversed his decision and heard the case.

Order denying motion to vacate judgment will not support subsequent plea of res judicata:

34 *C. J.* 387,

Cohen vs. *Levy*, 49 App. Div. 638, 62 N. Y. S. 1060;

Blank vs. *Blank*, 13 N. E. 615;

Steele vs. *Bliss et al*, 170 Mich. 175, 135 N. W. 931;

Monroe vs. *Monroe*, 21 N. Y. S. 655;

Tobias vs. *Tobias*, 193 Ill. A. 95;

Estudillo et al vs. *Security Loan & Trust Co.*, 149 Cal. 556, 87 Pac. 19.

The proceedings by the trustee in the California Court did not bar the right of the Referee to hear the evidence in support of respondents' objections to petitioner's claim.

Pepper vs. *Litton*, supra, *In re James A. Foundry*, supra, *In re Powers*, supra, *Local Loan Company* vs. *Hunt*, supra, *Mercoid Corporation* vs. *Mid-Continent Investment Company*, 320 U. S. 660, 88 L. Ed. 376. The Circuit Court properly found that the matters upon which the Referee disallowed the claim were not in litigation in the proceedings in the California courts, were not there urged, heard nor decided.

We think we should call this Court's attention to these facts: on page 7 of the petitioner's brief appears the statement: "All creditors, (excepting Heiser) filed written petition alleging California judgment was obtained by fraud and perjury, asking Referee in Oklahoma to authorize and instruct trustee to go to California and attack the judgment." We submit that the application of the creditors appearing at page 20 of the record contains no such allegations and statements. At the bottom of the same page of petitioner's brief appears the statement that the trustee in his motion to vacate the judgment alleged fraud in the procurement of the judgment and perjury as to the values of the gems converted by Woodruff. Again we submit that these statements are not borne out by the record, as we have heretofore pointed out and as the Referee and Circuit Court found.

At page 8 of petitioner's brief appears the following statement:

"After the judgment so became final, the same

identical charges, in the same words and identical worded phrases were filed as objections to the allowance of the Heiser judgment as a filed claim before the Oklahoma Referee."

The objections of the creditors to the allowance of the claim and amendments thereto will be found at pages 41, 122 and 125 of the record. Compared with the motion of the trustee to vacate the judgment it will be found that they do not support this statement of the petitioner.

C

A. COURT OF EQUITY HAS JURISDICTION TO GRANT RELIEF AGAINST JUDGMENT OBTAINED BY WILFUL AND CORRUPT PERJURY

The respondents established that petitioner's judgment was obtained by wilful and corrupt perjury. The Bankruptcy Court is a court of equity and has jurisdiction to grant relief against such judgment by denying its enforcement or a claim based thereon:

U. S. vs. *Throckmorton*, 98 U. S. 61, 25 L. Ed. 93;

Marshall vs. *Holmes*, 141 U. S. 589, 35 L. Ed. 870;

Hazel-Atlas Glass Co. vs. *Hartford-Empire Co.*, 322 U. S. 237, 88 L. Ed. 1250;

Publicker vs. *Shallcross, et al*, 106 Fed. 2d 949 (3rd Cir.);

Munro vs. *Callahan*, 55 Neb. 75, 75 N. W. 151;

El Reno Mutual Fire Ins. Co. vs. *Sutton*, 41 Okla. 297, 137 Pac. 700;

McBride vs. *Corren*, 216 Pac. 104 (Okla.);
Vacuum Oil Co. vs. *Brett*, 294 Pac. 638 (Okla.);
Freese vs. *Hummel*, 37 Pac. 458 (Ore.);
Donovan vs. *Miller*, 88 Pac. 82 (Idaho);
Elkhorn Valley Bank vs. *Marley*, 85 N. W. 846 (Neb.);
Wirth vs. *Wiggand*, 122 N. W. 714 (Neb.);
Boring vs. *Ott*, 138 Wis. 260, 119 N. W. 865.

CONCLUSION

Pepper vs. *Litton*, supra, from this Court is, as we say in Oklahoma, on all fours with the case at bar. Upon it the Circuit Court relied. That Court remanded the case to the District Court for findings of fact and conclusions of law. Such procedure can hurt no one. If petitioner is entitled to have his claim allowed the District Court will allow it. If, as found by the Referee, the judgment underlying his claim does not represent a real debt, was obtained by fraud and wilful and corrupt perjury and is without merit he should not ask nor expect its allowance.

It is therefore respectfully submitted the writ should be denied because the decision of the Circuit Court herein is in harmony with established concepts of equity jurisprudence in the administration of the Bankruptcy Act; follows well settled and sound decisions of this Court, the

Tenth and other Circuit Courts and accords with right and justice as administered by our Federal Courts.

Respectfully,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELL WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents.

BRIEF OF RESPONDENTS ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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INDEX

Page

Statement of Case 1

Summary of Argument 12

Argument 13

Point I 13

The Bankruptcy Court, being a Court of exclusive jurisdiction in bankruptcy matters, and essentially a court of equity, has the power, authority and jurisdiction to inquire into the merits of the judgment underlying appellee's claim for the purpose of determining whether said claim is founded upon a real debt and is meritorious; also whether it should be (1) allowed in whole or in part, (2) disallowed or, (3) subordinated to the claims of other creditors.

Authorities Cited:

United States Fidelity & Guaranty Co. vs. Bray, 225 U. S. 205, 56 L. Ed. 1055 13
Pepper vs. Litton, 308 U. S. 295, 84 L. Ed. 281 13
Local Loan Co. vs. Hunt, 292 U. S. 234, 78 L. Ed. 1230 13
Beneficial Loan Co. vs. Noble, 129 Fed. 2d 425 13
Hansen vs. Wengren, 121 Fed. 2d 1011 13
Prudence Realization Corporation vs. Geist, 316 U. S. 89, 86 L. Ed. 1293 13
Lesser vs. Gray, 236 U. S. 70, 59 L. Ed. 471 14
Boynton vs. Ball, 121 U. S. 457, 30 L. Ed. 985 14
In Re James A. Brady Foundry Co., 3 Fed. 2d 437 14
In Re Continental Engine Co., 234 Fed. 58 14
Butzel vs. Webster Apt. Co., 112 Fed. 2d 362 14
In Re Avery, 114 Fed. 2d 768 14
Chandler vs. Thompson, 120 Fed. 940 14
In Re Thompson, 276 Fed. 313 14
Letcher County vs. De Foe, 151 Fed. 2d 987 14
Pepper vs. Litton, supra 14
Beneficial Loan Co. vs. Noble, supra 14
Local Loan Co. vs. Hunt, supra 14
In Re Farmers' Dairy Asso., 234 Fed. 118, 240 Fed. 121 16
Chambers vs. Continental Trust Co., 255 Fed. 441, 239 Fed. 1020 16
McCullough vs. Davenport Sav. Bank, 226 Fed. 309 16
Baldwin vs. Iowa State Traveling Men's Association, 283 U. S. 522, 75 L. Ed. 1244 17
Local Loan Co. vs. Hunt, 292 U. S. 234, 78 L. Ed. 1231 17

INDEX

Page

Point II 18

A court of equity has jurisdiction to tie the hands of a wrong doing judgment creditor so as to prevent him from profiting by his wrong.

Authorities Cited:

Boring vs. Ott, 138 Wis. 260, 119 N. W. 865 18
U. S. vs. Throckmorton, 98 U. S. 61, 25 L. Ed. 93 18
Marshall vs. Holmes, 141 U. S. 589, 35 L. Ed. 870 18
Hazel-Atlas Glass Co. vs. Hartford-Empire Co., 322 U. S. 237, 88 L. Ed. 1250 18
Mercoid Corp. vs. Mid-Continent Invest. Co., 320 U. S. 661, 88 L. Ed. 376 18
Keystone Driller Co. vs. General Excavator Co., 290 U. S. 240, 78 L. Ed. 293 18
Publicker vs. Shallcross, et al, 106 Fed. 2d 949 18
Munro vs. Callahan, 55 Neb. 75, 75 N. W. 151 18
El Reno Mutual Fire Ins. Co. vs. Sutton, 41 Okla. 297, 137 Pac. 700 18
McBride vs. Cowen, 216 Pac. 104 19
Vacuum Oil Co. vs. Brett, 294 Pac. 638 19
Freese vs. Hunmel, 37 Pac. 458 19
Donovan vs. Miller, 88 Pac. 82 19
Elkhorn Valley Bank vs. Marley, 85 N. W. 846 19
Wirth vs. Weigand, 122 N. W. 714 19

Point III 19

The proceedings on behalf of the Trustee in the California District Court and Ninth Circuit Court of Appeals are not res judicata of the objections urged to petitioner's claim before the Referee in Bankruptcy and did not bar or estop the Bankruptcy Court from exercising its equitable jurisdiction and powers herein.

The Proceedings in the California District Court 21

Authorities Cited:

Spencer Smith vs. Hamilton J. McCool, 21 L. Ed. 324 22
D. L. Flack and Son vs. West Virginia Coal Company, 46 Fed. 2d 177 22
Lynch vs. City of Butte, 43 Pac. 2d 652 22
In Re Lauderdale's Estate, 269 NYS 229 22
Samuel vs. Public Nati. Bank & Trust Company of N. Y., 270 N. Y. Sup. 112 22
Russell vs. Place et al, 94 U. S. 606, 24 L. Ed. 214 23
De Sollar vs. Hauseombe, 158 U. S. 216, 39 L. Ed. 956 23
Williams vs. MacDonald et al, 180 Cal. 546, 182 Pac. 29 23
Molen vs. Bussi et al, 5 Pac. 2d 450 23
In Re Powers, 115 Fed. 2d 69 23
St. Louis Southwestern Ry. Co. vs. Bolinger & Co., 17 Fed. 2d 924 23
Aetna Life Ins. Co. vs. Eaton, 43 Fed. 2d 711 23
Passailaigue vs. Herron et al, 38 Fed. 2d 775 23
34 C. J., Sec. 1518 (b), p. 1074 24
Estudillo et al vs. Security Loan & Trust Co. of So. Cal., 87 Pac. 19 25
Antonsen vs. Pacific Container Co., 120 Pac. 2d 148 25
Resnick vs. Parryzek, 154 N. E. 350, 34 C. J. 387 25
Hammond Lumber Co. vs. Gilkey, 7 Pac. 2d 724 25
Nuckolls vs. Bank of Cal., 74 Pac. 2d 264 25
Kantor vs. Mutual Const. Co., 3 F. R. D. 227 25
34 C. J., Section 597, page 387 26

INDEX

Page

The Appeal to the Ninth Circuit Court of Appeals 28

Authorities Cited:

Stevirmae Oil & Gas Co. vs. Dittman, 62 L. Ed. 948, 210 U. S. 214 28
Russell vs. Place, et al, supra 28
Pepper vs. Litton, supra 29
United Shoe Machinery Corporation et al, vs. United States of America, 258 U. S. 451, 66 L. Ed. 708 32
Chris Larsen vs. Northland Transportation Company, 292 U. S. 20, 78 L. Ed. 1096 32
In Re Powers, 114 Fed. 2d 69 34
In Re James A. Brady Foundry, supra 34

Point IV 35

By acquiescing in the order of August 26, 1940, staying proceedings in bankruptcy; filing objections to claim and participating in hearings thereon before Referee in Bankruptcy, petitioner submitted to jurisdiction of Bankruptcy Court and is now estopped to question that jurisdiction.

Authorities Cited:

Remington on Bankruptcy, 3d Ed., Section 2351, Vol. 5 35
M. E. Heiser vs. Marguerite B. Woodruff, et al, supra 35

Point V 36

This case, being here for all purposes, respondents ask that the Court consider the evidence in support of respondents' objections to petitioner's claim for the purpose of determining whether the order of the Referee in Bankruptcy denying the claim is reasonably supported by competent evidence and should be affirmed.

Authorities Cited:

Donovan vs. Pennsylvania Co., 199 U. S. 279, 50 L. Ed. 192 36
Panama R. Co. vs. Napier Shipping Co., 166 U. S. 280, 41 L. Ed. 1004 36
Puerto Rico vs. Havemeyer, 296 U. S. 506, 80 L. Ed. 357 36
Story Parchment Co. vs. Paterson Parchment Paper Co., 282 U. S. 555, 75 L. Ed. 544 36
Remington on Bankruptcy, 3rd Ed. Vol. 8, Section 3669 37
In Re Farmer's Dairy Asso., supra 37
Chambers vs. Continental Trust Company, supra 37
McCullough vs. Davenport Savings Bank, supra 37
Boynton vs. Ball, supra 47
Pepper vs. Litton, supra 47
Lesser vs. Gray, supra 47
Prudence Realization Corporation vs. Geist, supra 47
U. S. F. & G. Co. vs. Bray, supra 47

Conclusion 47

Authorities Cited:

Russell vs. Place, supra 48
Mercoid Corporation vs. Mid-Continent Investment Company, supra 48
Hazel-Atlas Glass Company vs. Hartford-Empire Company, supra 48

INDEX

Page

TABLE OF AUTHORITIES CITED

Cases

Aetna Life Ins. Co. vs. Eaton, 43 Fed. 2d 711 23
Antonsen vs. Pacific Container Co., 120 Pac. 2d 148 25
Baldwin vs. Iowa State Traveling Men's Association, 283 U. S. 522, 75 L. Ed. 1244 17
Beneficial Loan Co. vs. Noble, 129 Fed. 2d 425 13
Boring vs. Ott, 138 Wis. 260, 119 N. W. 865 18
Boynton vs. Ball, 121 U. S. 457, 30 L. Ed. 985 14
Butzel vs. Webster Apt. Co., 112 Fed. 2d 362 14
Chambers vs. Continental Trust Co., 235 Fed. 441, 239 Fed. 1020 19
Chandler vs. Thompson, 120 Fed. 940 14
Chris Larsen vs. Northland Transportation Company, 292 U. S. 20, 78 L. Ed. 1096 32
D. L. Flack and Son vs. West Virginia Coal Company, 46 Fed. 2d 177 22
De Sollar vs. Hauseombe, 158 U. S. 216, 39 L. Ed. 956 23
Donovan vs. Miller, 88 Pac. 82 19
Donovan vs. Pennsylvania Co., 199 U. S. 279, 50 L. Ed. 192 36
Elkhorn Valley Bank vs. Marley, 85 N. W. 846 19
El Reno Mutual Fire Ins. Co. vs. Sutton, 41 Okla. 297, 137 Pac. 700 18
Estudillo et al vs. Security Loan & Trust Co. of So. Cal., 87 Pac. 19 25
Freese vs. Hunmel, 37 Pac. 458 19
Hammond Lumber Co. vs. Gilkey, 7 Pac. 2d 724 25
Hansen vs. Wengren, 121 Fed. 2d 1011 13
Hazel-Atlas Glass Co. vs. Hartford-Empire Co., 322 U. S. 237, 88 L. Ed. 1250 18
Heiser vs. Woodruff (10th Cir.), 128 Fed. 2d 178 6
In Re Avery, 114 Fed. 2d 768 14
In Re Continental Engine Co., 234 Fed. 58 14
In Re Farmers' Dairy Asso., 234 Fed. 118, 240 Fed. 121 16
In Re James A. Brady Foundry Co., 3 Fed. 2d 437 14
In Re Lauderdale's Estate, 269 NYS 229 22
In Re Powers, 115 Fed. 2d 69 23
In Re Powers, 114 Fed. 2d 69 34
In Re Thompson, 276 Fed. 313 14
In Re Woodruff (9th Cir.), 121 Fed. 2d 152 6
Jackson vs. Heiser (9th Cir.), 111 Fed. 2d 310 6
Jackson vs. Lynch (9th Cir.), 111 Fed. 2d 1003 6
Kantor vs. Mutual Const. Co., 3 F. R. D. 227 25
Keystone Driller Co. vs. General Excavator Co., 290 U. S. 240, 78 L. Ed. 293 18
Lesser vs. Gray, 236 U. S. 70, 59 L. Ed. 474 14
Letcher County vs. De Foe, 151 Fed. 2d 987 14
Local Loan Co. vs. Hunt, 292 U. S. 234, 78 L. Ed. 1230 13
Local Loan Co. vs. Hunt, 292 U. S. 234, 78 L. Ed. 1231 17
Lynch vs. City of Butte, 43 Pac. 2d 652 22
Marshall vs. Holmes, 141 U. S. 589, 35 L. Ed. 870 18
Mercoid Corp. vs. Mid-Continent Invest. Co., 320 U. S. 661, 88 L. Ed. 376 18
M. E. Heiser vs. Leonard Woodruff, a bankrupt (10th Cir.), 112 Fed. 2d 652 6
M. E. Heiser vs. Marguerite B. Woodruff et al (10th Cir.), 150 Fed. 2d 867 6

INDEX

Page

Molen vs. Bussi et al, 5 Pac. 2d 450 23
Munro vs. Callahan, 55 Neb. 75, 75 N. W. 151 18
McBride vs. Cowen, 216 Pac. 104 19
McCullough vs. Davenport Sav. Bank, 226 Fed. 309 16
Nuckells vs. Bank of Cal., 74 Pac. 2d 264 25
Panama R. Co. vs. Napier Shipping Co., 166 U. S. 280, 41 L. Ed. 1004 36
Passailaigue vs. Herron et al, 38 Fed. 2d 775 26
Pepper vs. Litton, 308 U. S. 295, 84 L. Ed. 281 13
Prudence Realization Corporation vs. Geist,
316 U. S. 89, 86 L. Ed. 1293 13
Publicker vs. Shallcross, et al, 106 Fed. 2d 949 18
Puerto Rico vs. Havemeyer, 296 U. S. 506, 80 L. Ed. 357 36
Resnick vs. Parryzek, 154 N. E. 350, 33 C. J. 387 25
Russell vs. Place et al, 94 U. S. 606, 24 L. Ed. 214 23
Samuel vs. Public Natl. Bank & Trust Company of N. Y.,
270 N. Y. Sup. 132 22
Spencer-Smith vs. Hamilton J. McCool, 21 L. Ed. 324 22
St. Louis Southwestern Ry. Co. vs. Bolinger & Co., 17 Fed. 2d 924 23
Stevirmae Oil & Gas Co. vs. Dittman, 62 L. Ed. 248, 210 U. S. 214 25
Story Parchment Co. vs. Paterson Parchment Paper Co.,
282 U. S. 555, 75 L. Ed. 544 36
United Shoe Machinery Corporation et al. vs. United States of
America, 258 U. S. 451, 66 L. Ed. 708 32
United States Fidelity & Guaranty Co. vs. Bray,
225 U. S. 205, 56 L. Ed. 1055 13
U. S. vs. Hacknorton, 98 U. S. 61, 25 L. Ed. 93 18
Vacuum Oil Co. vs. Brett, 294 Pac. 638 19
Williams vs. MacDonald et al, 180 Cal. 546, 182 Pac. 20 25
Willie Mae Woodruff vs. M. E. Heiser (10th Cir.), 150 Fed. 2d 873 6
Willie Mae Woodruff et al vs. M. E. Heiser
(10th Cir.), 150 Fed. 2d 869 (this case) 6
Wirth vs. Weigand, 122 N. W. 714 19

Statutes

Section 473, California Code of Civil Proceduge 24
Section 60-B, Federal Rules of Civil Procedure 24

Textbooks

34 C. J., Section 597, page 387 26
34 C. J., Sec. 1518 (b), p. 1074 24
Remington on Bankruptcy, 3d Ed., Section 2351, Vol. 5 35
Remington on Bankruptcy, 3rd Ed., Vol. 6, Section 3069 37

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., OLDA BELL WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents.

BRIEF OF RESPONDENTS ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

STATEMENT OF CASE

Respondents do not agree with the petitioner's statement of the case, and find it necessary to make their own statement.

On August 9, 1928, the petitioner had shipped to him from San Francisco to Los Angeles, California, by barge

thirty-six sacks of corundum (ore) weighing 4325 pounds and then valued at $500.00 (R. Vol. 2, p. 1117). This shipment is identified in the record by the deposition of the petitioner as the same material or merchandise for which he later recovered the judgment hereinafter referred to (R. Vol. 2, p. 801-3-820-850-1).

On Feb. 19, 1930, the petitioner filed a claim in the matter of the Bankruptcy of the Golden State Item Company in the United States District Court for the Southern District of California, for the same material or merchandise then valued at $30,250.00 (R. Vol. 2, p. 1188). This claim was disallowed (R. Vol. 2, p. 1187), and an appeal prosecuted to the District Court and the appeal dismissed (R. Vol. 2, p. 1187).

On May 11, 1932, petitioner sued the bankrupt, Leonard J. Woodruff, and others in the District Court of the United States for the Southern District of California, Central Division, in Case No. 5587-J for the alleged conversion of the same material and merchandise which he then valued in his complaint at $164,000.00 (R. Vol. 2, p. 1040-3). The case was dismissed for want of prosecution on June 12, 1933 (R. Vol. 2, p. 1043-6).

On June 11, 1935, and after his first case had been dismissed for want of prosecution, petitioner re-filed the case in the same Court where it was docketed as 7256-C. (R. Vol. 1, p. 45). Service of summons was obtained upon the bankrupt on the 31st day of January, 1939, by leaving the

summons at his residence with a minor son (R. Vol. 1, p. 215). The bankrupt was away from home at the time of this service and did not return until after his default was entered (R. Vol. 1, p. 618). Judgment was entered on March 20, 1939 (R. Vol. 1, p. 10). The petitioner was the only witness who testified at the time that the judgment was entered (R. Vol. 2, p. 650).

On the 9th day after the entry of this judgment the bankrupt served his notice of motion to set aside the default and the default judgment (R. Vol. 1; p. 219).

It is stated on page 8 of the petitioner's brief and in brief in support of petition for writ of certiorari that bankrupt "moved to vacate judgment on the ground (among others) that it had been procured by fraud and perjury as to values of the gems the Court had found in his judgment, Woodruff had defrauded Heiser of." Respondents respectfully challenge this statement. The record shows that the grounds upon which the bankrupt moved to vacate the default and the default judgment were: (1) that said default and default judgment were entered prematurely and without authority of law; (2) that they were entered through surprise, inadvertence, mistake and excusable neglect in that he was not actually notified that his son was served with process in the case until after default judgment was entered; (3) that where process is not personally served on defendant, the Court may allow defendant where justice

demands to answer to the merits of the original action (R. Vol. 1, p. 219-20).

It is respectfully submitted that nowhere in this motion was the charge made that the judgment was procured by fraud and perjury as to the value of the gems which the petitioner claims to have owned.

This motion was denied (R. Vol. 1, p. 263-6).

The parties then stipulated that the Court should hear evidence to determine the value of the property which the petitioner claimed to have lost. The record does not disclose why the petitioner entered into this stipulation, but it would seem apparent from the record that this was done because the Court evidently did not hear any evidence as to the value of the property at the time that judgment by default was rendered. The stipulation specifically provided that "the issues at such hearing to be limited to ascertaining by the Judge of said Court, from such evidence to be presented by the said parties under the rules of evidence of said Court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment" (R. Vol. 1, p. 265).

The petitioner, contending that he was possessed of certain property of which he had been defrauded, or which had been wrongfully converted, at the hearing in pursuance of this stipulation, which was had on June 19, 22, 23, 27, 28, 1939 (R. Vol. 2, p. 1120), proceeded to endeavor to establish

the value of something which he claimed was in existence and of which he had at one time the title and possession, but which was not then in existence so far as petitioner was concerned. To do this the petitioner brought into Court what he claimed were sapphires, zircons, and opals of like quality to those which he had had in 1928, 11 years before, and sought to establish the value of the stones which he brought into Court upon the theory and basis that his property was of like quality and value (R. Vol. 2, p. 1163-4). The question of his ownership and possession of this property in 1928 was specifically excluded from the hearing (R. Vol. 1, p. 265). After hearing the evidence as to the value based upon the assumption of the existence, ownership and possession of material and merchandise of like quality to that exhibited in Court, the Court permitted the judgment to stand in amount.

(The respondents upon the hearing before the Referee contended and established that the petitioner never at any time owned, nor possessed the semi-precious stones for the loss of which he recovered judgment and that for this reason his claim is clearly without merit and does not represent a real debt.)

On July 5, 1939, an adjudication of bankruptcy was entered by the United States Court for the Eastern District. Since that time the following cases have been adjudicated

by the Circuit Courts of Appeals of the Ninth and Tenth Circuits, arising out of this bankruptcy matter:

M. E. Heiser vs. *Leonard Woodruff*, a bankrupt (10th Cir.), 112 Fed. 2d 652;

Jackson vs. *Heiser* (9th Cir.), 111 Fed. 2d 310;

Jackson vs. *Lynch* (9th Cir.), 111 Fed. 2d 1003;

In Re Woodruff (9th Cir.), 121 Fed. 2d 152;

Heiser vs. *Woodruff* (10th Cir.), 128 Fed. 2d 178;

M. E. Heiser vs. *Marguerite B. Woodruff et al* (10th Cir.), 150 Fed. 2d 867;

Willie Mae Woodruff vs. *M. E. Heiser* (10th Cir.), 150 Fed. 2d 873;

Willie Mae Woodruff et al vs. *M. E. Heiser* (10th Cir.), 150 Fed. 2d 869 (this case).

After the adjudication in bankruptcy respondents and the Trustee advised the Referee in Oklahoma that in their opinion the judgment underlying petitioner's claim was erroneous, unjust and void, and that the Trustee should be directed to proceed to ascertain whether said judgment was subject to the criticism directed against it (R. Vol. 1, p. 20).

In connection with this proceeding the petitioner says, on page 8 of his brief that the respondents "filed a written petition before the Referee alleging that the California judgment was obtained by fraud and perjury and asking the Referee in Oklahoma to authorize and instruct the Trustee to go to California and attack the judgment." Respondents respectfully challenge this statement and submit

that their application filed before the Referee contained no such allegations as to fraud and perjury (R. Vol. 1, p. 20).

In response to the authority granted him by Referee, the Trustee employed counsel in California and filed in the case in which the judgment was rendered in the United States District Court for the Southern District of California, Central Division, his "notice of motion to vacate judgment, to set aside default, to vacate orders entered after judgment, to permit the filing of an answer by, and on behalf of Leonard J. Woodruff, to permit the filing of an answer by P. M. Jackson, Trustee, in bankruptcy for Leonard J. Woodruff and to allow the Trustee in bankruptcy to intervene" (R. Vol. 1, p. 275).

In connection with the contents of this motion petitioner states on page 9 of his brief, "The Trustee, Jackson, joined by the bankrupt, Woodruff, then filed in the California District Court charging fraud in procurement of the judgment, perjury as to the value of the gems converted by Woodruff, and many other grounds set up in the pleadings and affidavits." The respondents respectfully challenge this statement, and submit to the Court that the grounds upon which the Trustee sought permission to intervene and asked that the judgment be vacated and set aside and that he be permitted to file an answer and be heard upon the merits, appearing at page 275-278 of Vol. 1 of the record herein, contain no allegations of fraud in procurement of the judgment or perjury as to the value of the gems allegedly

converted. There is in this notice the following statement: "Said motion will be made upon the ground that a fraud was practiced upon the above entitled Court with respect to the entry of said judgment." The character of the fraud thus alleged to have been practiced upon the Court with respect to the entry of the judgment and not its procurement is not further specified in the record and, inasmuch as the Trustee was never granted permission to intervene in the action and never became a party to it, as is hereinafter set out, there was no effort to prove the character of fraud in the entry of the judgment which the Trustee had specified in his notice, but it is pointed out that fraud in the entry of the judgment has no reference to fraud in the obtaining of the judgment nor perjury as to the value of the gems allegedly converted.

The motion of the Trustee was heard, as noticed. The proceedings incident thereto will be set out more in detail in our brief. Suffice now that the Trustee was not permitted to intervene in the action in which the judgment was rendered and never became a party thereto.

The Trustee then appealed to the Circuit Court of Appeals of the Ninth Circuit and the action of the District Court in denying his motion for permission to intervene was affirmed.

In the meantime the petitioner had filed his claim in the bankruptcy proceeding in Oklahoma based on his judgment (R. Vol. 1, p. 8), and later a supplement to his claim

after the Circuit Court of Appeals for the Ninth Circuit had affirmed the order of the California District Court denying the Trustee permission to intervene in the case out there in which the judgment was rendered.

Bankrupt then filed in the bankruptcy proceeding his petition for an arrangement of his debt and for a stay of administration in bankruptcy pending the determination of such petition. On August 26, 1940 (R. Vol. 1, p. 29) the Referee granted a stay of proceedings, directed filing of objections to claims and ordered that all claims should be on contests between creditors and at their expense.

Certain creditors of the bankrupt, including the respondents, then filed their objections to the allowance of petitioner's claim in bankruptcy (R. Vol. 1, p. 41), and amendment thereto (R. Vol. 1, p. 122). With respect to the allegations and contents of the objections to the Heiser claim before the Referee and without citation of record, petitioner, on page 9 of his brief, makes this statement:

> "After the judgment so became final, the same identical charges, in the same words and identical word phrases appearing in the affidavits and pleadings were filed as objections to the allowance of the Heiser judgment as a filed claim before the Oklahoma Referee."

The respondents respectfully challenge this statement. An analysis of the contents of the objections filed to the allowance of the Heiser claim before the Referee in Bankruptcy will disclose that there for the first time in any pro-

ceeding, either before the California Courts, or the Bankruptcy Court in Oklahoma, it was charged and alleged that the judgment underlying the claim was obtained by perjured testimony, did not represent a real debt and was without merit (R. Vol. 1, p. 20). The Circuit Court of Appeals recognized this to be the state of the record and the facts in the case in the majority opinion from which the following is quoted:

> "But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Woodruff to vacate the judgment, by the motion of the trustee and the defendant Woodruff to set aside the judgment, or otherwise. Therefore the judgment did not constitute res judicata in respect to these issues, and the claim was open to attack on these grounds. *Pepper* vs. *Litton*, supra. In reaching this conclusion we are mindful of the statement in *Jackson* vs. *Heiser*; supra, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed to the

> court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser."

The matter was heard by the Referee in Bankruptcy upon the merits of the objections urged to the Heiser claim. Much evidence was introduced and the hearing proceeded over a considerable period of time.

The Referee in Bankruptcy in Oklahoma is the only Court that has heard, or considered the evidence produced by the respondents in opposition to the claim of the petitioner and upon hearing this evidence he denied the claim in toto. On review the District Court, feeling that the Referee was without jurisdiction to inquire into the merits of the claim to ascertain whether or not it was founded upon a real debt and was meritorious, reversed the Referee without making findings of fact and conclusions of law and allowed the claim in full. Respondents then appealed to the Circuit Court of Appeals which Court reversed the District Court.

SUMMARY OF ARGUMENT

Point I.

The Bankruptcy Court, being a Court of exclusive jurisdiction in bankruptcy matters has the power, authority and jurisdiction to inquire into the merits of a judgment underlying a claim filed in a bankruptcy proceeding for the purpose of determining whether the claim represents a real debt and is founded upon merit.

Point II.

A court of equity has jurisdiction to tie the hands of a wrong-doing judgment creditor so as to prevent him from profiting by his wrong.

Point III.

The proceedings on behalf of the Trustee in the California Courts are not res judicata of the objections urged to petitioner's claim before the Bankruptcy Court and did not bar or estop that Court from exercising its equitable jurisdiction and powers herein.

Point IV.

By acquiescing in the order of August 26, 1940, staying proceedings in bankruptcy, filing objections to claims and participating in hearings thereon before the Referee in Bankruptcy, petitioner submitted to the jurisdiction of Bankruptcy Court and is now estopped to question that jurisdiction.

Point V.

This case, being here for all purposes, respondents ask this Court to consider and affirm the order of the Referee disallowing petitioner's claim.

ARGUMENT

Point I.

The Bankruptcy Court, being a Court of exclusive jurisdiction in bankruptcy matters, and essentially a court of equity, has the power, authority and jurisdiction to inquire into the merits of the judgment underlying appellee's claim for the purpose of determining whether said claim is founded upon a real debt and is meritorious; also whether it should be (1) allowed in whole or in part, (2) disallowed or, (3) subordinated to the claims of other creditors.

The Bankruptcy Court is a Court of exclusive jurisdiction:

United States Fidelity & Guaranty Co. vs. *Bray*, 225 U. S. 205, 56 L. Ed. 1055;

Pepper vs. *Litton*, 308 U. S. 295, 84 L. Ed. 228;

Local Loan Co. vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1230;

Beneficial Loan Co. vs. *Noble* (10th Cir.), 129 Fed. 2d 425;

Hansen vs. *Wengren* (10th Cir.), 121 Fed. 2d 1011.

It is essentially a court of equity and its proceedings inherently proceedings in equity. Authorities cited and *Prudence Realization Corporation* vs. *Geist*, 316 U. S. 89, 86 L. Ed. 1293.

The jurisdiction of Bankruptcy Courts is exclusive of all other courts with respect to the allowance and disallowance of claims. Authorities cited.

This exclusive jurisdiction gives Bankruptcy Courts the power to inquire into the validity of any claim asserted

against the estate and to disallow it if it is ascertained to be without lawful existence. *Lesser* vs. *Gray*, 236 U. S. 70, 59 L. Ed. 471; *Pepper* vs. *Litton*, supra.

Bankruptcy Courts have exercised equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done. These equitable considerations are exercised in the allowance or disallowance of claims. *Pepper* vs. *Litton*, *Beneficial Loan Co.* vs. *Noble*, supra.

The fact that debt or claim has been reduced to judgment does not affect its character so far as provability in bankruptcy is concerned.

Boynton vs. *Ball*, 121 U. S. 457, 30 L. Ed. 985;

Pepper vs. *Litton*, supra;

In Re James A. Brady Foundry Co. (7th Cir.), 3 Fed. 2d 437;

In Re Continental Engine Co. (7th Cir.), 234 Fed. 58;

Butzel vs. *Webster Apt. Co.* (6th Cir.), 112 Fed. 2d 362;

In Re Avery (6th Cir.), 114 Fed. 2d 768;

Chandler vs. *Thompson* (7th Cir.), 120 Fed. 940;

In Re Thompson (D. C.), 276 Fed. 313;

Local Loan Co. vs. *Hunt*, supra;

Letcher County vs. *De Foe* (6th Cir.), 151 Fed. 2d 987.

A note, invalid because given without consideration, does not become valid because reduced to judgment by default. A check given for a gambling debt and unlawful, is not made lawful by reduction to judgment. The character of the debt or obligation is not changed by its merger into a judgment.

If it were otherwise, the Bankruptcy Court would not have exclusive jurisdiction over claims filed with it. If it were bound by judgments of other courts its hands would be tied. It could not exercise its equitable powers in the marshaling and distribution of the assets of the estate.

Let us assume that default judgment is rendered in an action for conversion of two automobiles. Bankruptcy then intervenes, claim is filed based upon judgment and objections filed thereto. The Trustee or creditors are able to establish by undisputed proof, (as here) that claimant did not own but one of the automobiles; never had title to or possession of the other car and had parted with title to the first one, the value of which was materially less than the amount of the judgment. Would the Bankruptcy Court be precluded by the judgment from inquiring into the merits of the claim simply because of the judgment? Creditors earnestly submit that the answer must be "No". The posed facts fit this case. The undisputed evidence shows that petitioner never possessed the several thousand ounces of commercial stones for which he obtained judgment; the material placed in the bank at Los Angeles was corundum

or ore of inconsequential value and he parted with the title to this property for value before he went to Europe. The inherent equity jurisdiction of the Bankruptcy Court rebels at fraud, chicanery, perjury. Here is a shocking example of such dealings. Equity will not permit technical considerations to give life and form to such misgivings and the perpetrator thereof to profit thereby at the expense of others who were strangers to the entire transaction.

The Referee disallowed the claim in toto. The order of disallowance carries with it a presumption of correctness and sufficiency of evidence to sustain the findings of the Referee:

In Re Farmers' Dairy Asso.,
234 Fed. 118, 240 Fed. 121;

Chambers vs. *Continental Trust Co.*,
235 Fed. 441, 239 Fed. 1020;

McCullough vs. *Davenport Sav. Bank*, 226 Fed. 309.

Inherent in this presumption is the finding that petitioner's claim is not founded upon a real debt and is without merit; that debtor was not indebted to him at the time judgment was rendered; that his purported cause of action for fraud and conversion was fictitious and that his judgment was obtained by fraud and upon perjured testimony. Shall a claim based upon such a judgment be permitted to participate in the distribution of assets by a Bankruptcy Court?

It must be borne in mind that respondents are not seeking to vacate and set aside the judgment in the bankruptcy

proceeding. Their attack is directed at petitioner's claim. If his claim is disallowed the judgment still remains in force. Being based upon fraud and conversion there may be some question as to whether it can be discharged in bankruptcy. The order of the Referee disallowed petitioner's claim. It did not purport to disturb his judgment. The order of the District Court allows his claim—not his judgment. There is a vital distinction here.

Petitioner's judgment is not protected by the Full Faith and Credit Clause of the Federal Constitution. *Baldwin* vs. *Iowa State Traveling Men's Association*, 283 U. S. 522, 75 L. Ed. 1244.

Rules of State Courts and decisions of State Appellate Courts subversive of the general purpose of the Bankruptcy Act are not controlling upon Federal Courts. *Local Loan Co.* vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1231.

Respondents therefore respectfully submit that the Bankruptcy Court is clothed with power and authority to inquire into any judgment underlying a claim filed in bankruptcy for the purposes of determining whether the judgment represents a real debt and thus, whether the claim is meritorious and should be (1) allowed in whole or in part, (2) disallowed, or (3) subordinated to the claims of other creditors and that that power was rightfully exercised in this case.

Point II.

A court of equity has jurisdiction to tie the hands of a wrong doing judgment creditor so as to prevent him from profiting by his wrong.

By their objections to the claim of petitioner and the evidence which they introduced in support of their objections before the Referee in Bankruptcy, the respondents endeavored to and did invoke the doctrine of *Boring* vs. *Ott*, 138 Wis. 260, 119 N. W. 865. That was an action to enjoin the collection of a judgment upon the ground that the judgment was obtained by fraudulent representations and concealment. The Court held that such an action would lie and that a Court of equity has jurisdiction to relieve against a judgment contrary to equity and will restrain the execution of a judgment at law obtained by perjury of the successful party. This doctrine has application here:

U. S. vs. *Throckmorton*, 98 U. S. 61, 25 L. Ed. 93;

Marshall vs. *Holmes*, 141 U. S. 589, 35 L. Ed. 870;

Hazel-Atlas Glass Co. vs. *Hartford-Empire Co.*, 322 U. S. 237, 88 L. Ed. 1250;

Mercoid Corp. vs. *Mid-Continent Invest. Co.*, 320 U. S. 661, 88 L. Ed. 376;

Keystone Driller Co. vs. *General Excavator Co.*, 290 U. S. 240, 78 L. Ed. 293;

Publicker vs. *Shallcross, et al*, 106 Fed. 2d 949 (3rd Cir.);

Munro vs. *Callahan*, 55 Neb. 75, 75 N. W. 151;

El Reno Mutual Fire Ins. Co. vs. *Sutton*, 41 Okla. 297, 137 Pac. 700;

McBride vs. *Cowen*, 216 Pac. 104 (Okla.);

Vacuum Oil Co. vs. *Brett*, 294 Pac. 638 (Okla.);

Freese vs. *Hummel*, 37 Pac. 458 (Ore.);

Donovan vs. *Miller*, 88 Pac. 82 (Idaho);

Elkhorn Valley Bank vs. *Marley*, 85 N. W. 846 (Neb.);

Wirth vs. *Weigand*, 122 N. W. 714 (Neb.).

Herein the respondents seek the aid of equity to prevent the petitioner from enjoying the benefits of his ill-gotten judgment. They do not seek to set aside the judgment, nor to destroy it, but to prevent the petitioner personally from realizing upon the judgment. The disallowance of his claim does not affect his judgment. It still remains in force unless discharged by bankruptcy, but the disallowance does prevent him from enjoying the benefits of a judgment obtained by perjury, which is not founded upon a real debt and is without merit.

Point III.

The proceedings on behalf of the Trustee in the California District Court and Ninth Circuit Court of Appeals are not res judicata of the objections urged to petitioner's claim before the Referee in Bankruptcy and did not bar or estop the Bankruptcy Court from exercising its equitable jurisdiction and powers herein.

Petitioner contends that the proceedings on behalf of the Trustee in the California Courts amounts to an adjudication on the merits of the objections urged to petitioner's claim and that by reason thereof respondents were estopped

under the doctrine of res judicata from urging their objections to petitioner's claim before the Referee in Bankruptcy.

In response to this contention respondents say:

(a) The proceedings by the Trustee in the California Courts did not adjudicate the objections urged to the claim of the petitioner before the Referee in Bankruptcy and which were sustained by the Referee in Bankruptcy, to-wit: That the judgment was obtained by perjured testimony, does not represent a real debt and is without merit, for which reasons the claim of the petitioner in Bankruptcy was disallowed.

(b) The proceedings on behalf of the Trustee in the California Courts, whatever their effect, are not binding upon the creditors as objectors to petitioner's claim.

(A)

The proceedings by the Trustee in the California Courts did not adjudicate the objections urged to the claim of the petitioner before the Referee in Bankruptcy and which were sustained by the Referee in Bankruptcy, to-wit: That the judgment was obtained by perjured testimony, does not represent a real debt and is without merit, for which reasons, the claim of the petitioner in Bankruptcy was disallowed.

The Proceedings in the California District Court

(1) The Trustee filed an application or a motion for permission to intervene in the action in the California District Court in which the judgment was rendered, so that he could then move to vacate the judgment and be permitted to file an answer going to the merits of the cause of action set up in the complaint in the case in which the judgment was rendered. He was denied this request. In other words, he was never permitted to intervene in the California case and was never a party to the proceedings out there. Therefore, no order or judgment which was entered in the case upon his motion could be binding upon him because he was never a party to that litigation. The Ninth Circuit Court so held. See p. 15, appendix, petitioner's brief.

(2) No judgment was entered in the proceeding in the California Court upon the motion of the Trustee for permission to intervene so that he could move to vacate the judgment and file an answer setting up a defense to the cause of action set up in petitioner's complaint in the District Court of California. It is well settled that before an order or decision of a court of record can be made the basis of a plea of res judicata, that order or decision must be reduced to judgment in which is set out the matters which were determined by the Court, and the decision of the Court on such matters.

Spencer Smith vs. *Hamilton J. McCool*, 21 L. Ed. 324;

D.L. Flack and Son vs. *West Virginia Coal Company*, 46 Fed. 2d, 177, affirmed 50 Fed. 2d 1075;

Lynch vs. *City of Butte*, 43 Pac. 2d 652;

In Re Lauderdale's Estate, 269 NYS 229;

Samuel vs. *Public Natl. Bank & Trust Company of N. Y.*, 270 N. Y. Sup. 112.

In connection with this matter respondents respectfully call the Court's attention to the proceedings which were had before the California District Court on behalf of the Trustee and to the decision or order of the District Court thereon (R. Vol. 1, p. 275, p. 286, Vol 1, p. 303 (Objectors Exhibit 4) and p. 333, Vol. 2, p. 987, p. 1012). Here it will be seen that the only order or judgment entered in the case is the Clerk's minutes (R. Vol. 1, p. 285), showing that the motion of the trustee for permission to intervene, etc., was denied. The proceedings at page 987-1012, Vol. 2, being from the reporter's transcript. The minute order at Vol. 1, page 285, and upon which petitioner predicates his plea of res judicata, as respects the action of the Trustee in the California Court, can not be said to rise to the dignity of a judgment upon which such a plea can be based. The Ninth Circuit Court of Appeals recognized it as an order and not a judgment.

(3) The issues upon which the Referee in Bankruptcy disallowed petitioner's claim were not raised, urged, heard, adjudicated by the California District Court upon the motion of the trustee.

Respondents have made reference herein to the proceedings had in California District Court upon the motion of the Trustee for permission to intervene, etc. It is shown by the affidavit of Mr. Cobb, by reporter's transcript of the proceedings and also by the deposition of Mr. Cobb (R. Vol. 2, p. 655) that the Trustee was not permitted to intervene in the action and no evidence was heard by the Court and that the only thing that the Court considered was the argument on behalf of the Trustee for permission to intervene; that counsel for the Trustee was not permitted to finish his argument by the Court, but it is shown by the Clerk's Minutes (R. Vol. 1, p. 285), after the argument had proceeded for less than an hour the Court denied the Trustee's motion.

The rule of estoppel by judgment is stated in the first head-note of *Russell* vs. *Place et al*, 94 U. S. 606, 24 L. Ed. 214.

Also see:

De Sollar vs. *Hauseombe*,
158 U. S. 216, 39 L. Ed. 956;
Williams vs. *MacDonald et al*,
180 Cal. 546, 182 Pac. 29;
Molen vs. *Bussi et al* (Cal.), 5 Pac. 2d 450;
In Re Powers (7th Cir.), 115 Fed. 2d 69;
St. Louis Southwestern Ry. Co. vs. *Bolinger & Co.*
(5th Cir.), 17 Fed. 2d 924;
Aetna Life Ins. Co. vs. *Eaton*
(2nd Cir.), 43 Fed. 2d 711;
Passailaigue vs. *Herron et al*
(5th Cir.), 38 Fed. 2d 775.

For the purpose of determining what proceedings were had in the California Court this Court will examine the pleadings and other documents prepared and filed in the case, the stenographic reports of the proceedings, including any evidence which may have been submitted, the statement of the Judge and his rulings and findings and the judgment of the Court. 34 C. J. Sec. 1518 (b) p. 1074.

The respondents brought before the Referee and there is in the record, references to which have been made, all of the proceedings had before the California court on the motion of the Trustee. An examination of these proceedings by this Court will determine that there was no adjudication there of any of the questions or objections raised to the allowance of the claim of the petitioner in the Bankruptcy Court. Judge Bratton so found in the majority opinion of the Circuit Court of Appeals, reference to which is made in our statement of the case.

(4) The proceedings on behalf of the Trustee was brought under Rule 60-B of the Federal Rules of Civil Procedure and Section 473 of the California Code of Civil Procedure which is as follows:

> "Relief from judgment taken by mistake, etc. The Court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. Application for such relief must be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the

application shall not be granted, and must be made within a reasonable time, and in no case exceeding six months, after such judgment, order or proceeding was taken."

A proceeding under this section is no bar to a subsequent action to set aside the judgment:

Estudillo et al vs. *Security Loan & Trust Co. of So. Cal.*, 87 Pac. 19;

Antonsen vs. *Pacific Container Co.*, 120 Pac. 2d 148;

Resnick vs. *Parryzek*, 154 N. E. 350, 34 C. J. 387;

Hammond Lumber Co. vs. *Gilkey*, 7 Pac. 2d 724 (Cal.);

Nuckolls vs. *Bank of Cal.*, 74 Pac. 2d 264 (Cal.).

Rule 60 B was taken from the above quoted section of the California Code. *U. S. for use of Kantor* vs. *Mutual Const. Co.*, 3 F. R. D. 227.

(5) A decision or order of a Court denying a motion for leave to intervene and to vacate a judgment and permit answer to be filed is not res judicata of a subsequent contest between the same parties to disallow a claim in bankruptcy based on the judment on the grounds that the judgment was obtained by perjured testimony, is without merit and does not represent a real debt. Especially is this true where the subsequent action is, as a matter of fact, not between the same parties, but arises upon objections filed by creditors to a claim in Bankruptcy by the plaintiff in the prior action which claim is based upon the judgment obtained in such action by the plaintiff therein and to which

action the creditors were never parties. 34 C. J. Section 597, page 387, Notes 26 and 27.

(B)

The proceedings on behalf of the Trustee in the California Courts, whatever their effect, are not binding upon the creditors as objectors to petitioner's claim.

Respondents urge upon this Court that the rule of res judicata cannot be applied here, even if the other objections to the efficacy of the order of the District Court of California upon the motion of the Trustee be held of no merit, because that proceeding was one in which the Trustee by direction of the Referee in Bankruptcy moved for permission to intervene so that he could then move to vacate the judgment underlying petitioner's claim. After the California proceedings were concluded the Bankrupt filed a petition for an arrangement under Section XI of the Bankruptcy Act, and on August 26, 1940, the Referee entered an order staying the proceedings in bankruptcy and permitting creditors to contest each other's claims (R. Vol. 1, p. 29-31). Thereafter the creditors of the Bankrupt, some of whose claims had been allowed without contest, filed their objections to the allowance of the Heiser claim, and for the first time there raised the charges that the petitioner's judgment was obtained by perjured testimony; that it did not represent a real debt, and was without merit. The order staying the proceedings in bankruptcy, specifically provides in paragraph 5 on page 31 of Volume 1 of the record,

that the contests should be between the creditors and that they should bear their own expenses, including attorneys fees, and that in no event should the bankrupt estate be bound or liable therefor. Based upon this order, the respondents proceeded to the introduction of evidence to substantiate their charges against the claim of petitioner and which evidence the Referee in Bankruptcy found sufficient to compel him to deny the claim in full. Two important distinctions thus are present, one is that in the hearing before the Referee in Bankruptcy of the objections to petitioner's claim, the parties were not the same. The Trustee was not a party, nor were these respondents bound by what the Trustee had previously done in the California Court for the very important reason that in the California Court the Trustee sought permission to intervene in that action and become a party to it, so that he could attack petitioner's judgment, while in the proceedings before the Referee in Bankruptcy these respondents objected to and attacked petitioner's claim. And their attack, at least in part, was based upon different grounds than those urged by the Trustee in his unsuccessful effort to get into the California case. The second important distinction is this: If respondents are bound by the acts of the Trustee and if he be held to have become a party to the case in the California District Court, and if his acts therein be held to have been an adjudication upon the merits of the grounds advanced by him in his efforts to intervene, vacate the judgment and file an

answer and if a judgment sufficient to support a plea of res judicata be held to have been entered therein, nevertheless, respondents cannot be held bound thereby for the reason, in addition to those urged, that in the California Court the attack was upon the judgment, while before the Bankruptcy Court these respondents attacked and objected to petitioner's claim, under the order of August 26, 1940, upon the grounds that it was without merit and did not represent a real debt.

No such identity of parties and of issues obtained as is required to sustain a plea of res judicata and to estop the respondents from urging their objections to petitioner's claim. *Russell* vs. *Place, et al,* supra.

THE APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS

The Trustee appealed to the Ninth Circuit Court of Appeals from the order denying his motion. The grounds upon which he sought a reversal are stated on pages 1014 and 1016 of Volume 2 of the record; those of petitioner in opposition on page 1015. Petitioner contended that "the orders appealed from are not appealable orders." Upon authority of *Stevirmac Oil & Gas Co.* vs. *Dittman,* 62 L. Ed. 248, 210 U. S. 214, the Court held the order denying Trustee's and bankrupt's motion to be such as would sustain an appeal. And for this purpose held that the Trustee and bankrupt had in effect instituted an independent action

in the District Court. But this holding, in order that the appeal could be considered by the Circuit Court, did not change the nature of the proceedings nor the order entered nor the fact that the issues upon which the Referee denied petitioner's claim were not urged, heard nor adjudicated by the District Court. The same situation existed in *Pepper* vs. *Litton*, supra, except that there the Trustee actually instituted an independent and separate action to vacate the judgment which was decided against him and affirmed against him on appeal. Subsequently he objected to the claim based upon the judgment before the Referee and this Court held that the fact that the Trustee had gone into the State Court, had filed an independent and separate action to vacate the judgment which was decided against him, had appealed to the Supreme Court of the State, which affirmed the judgment of the State District Court denying his petition to vacate the judgment, did not prevent the Referee from hearing his objections upon the ground that the judgment was obtained by intrinsic fraud, did not represent a real debt and was without merit, and did not prevent the Trustee from urging such objections to the claim on the ground that his objections were barred and estopped under the doctrine of res judicata. We have the same identical situation here. This Court held in *Pepper* vs. *Litton*, supra, that the merits of the objections to the claim were not adjudicated in the State Court proceedings and for that reason there was no judgment to support a plea of res

judicata. Here, the merits of the objections to the petitioner's claim were not urged in, heard or adjudicated by the California District Court or the Ninth Circuit Court of Appeals and there is no judgment on the merits such as is required to support a plea of res judicata.

As a matter of fact the Ninth Circuit Court of Appeals apparently only considered the appeal as respects the bankrupt and not as respects the Trustee. This would seem to be the case when we consider that the only question which that Court actually passed on was whether there had been valid service of process. As respects the charge of fraud (the only charge being made was that of fraud in the entry of the judgment--not fraud in its procurement and perjury) that Court said the charge was denied and not proved and apparently abandoned. As a matter of fact there was no issue made on this charge in the District Court as the record here shows, no evidence heard and no decision by the lower Court. If the Circuit Court considered the charge made, it was correct in the finding that it was abandoned. With respect to this feature of the matter, the Tenth Circuit Court of Appeals, in the majority opinion correctly stated: "But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the

Court and the parties was ever submitted to the Court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that Court in favor of Heiser." Again we say the Tenth Circuit Court of Appeals is correct. The record supports this finding and conclusion by that Honorable Court. There is nothing in the record to support petitioner's statements to the contrary. Apparently realizing this, petitioner, on page 32 of his brief, quotes from the contents of a statement filed by the bankrupt with the Referee. Surely such a statement cannot form the basis for the well-grounded plea of res judicata to which petitioner refers. The fact that petitioner seeks to rely on this statement, filed in the Bankruptcy Court, before Trustee's motion was filed in the California District Court, and in which statement bankrupt sought no relief and upon which he was granted no relief, would indicate a lack of confidence in his position with reference to the matters urged, heard and decided by the California courts.

Again apparently realizing that the record and the facts in the case support the decision of the Tenth Circuit Court of Appeals and that the matters and things upon which the Referee disallowed petitioner's claim were not, as found by the Tenth Circuit Court of Appeals, urged, heard nor decided by either Court in California, petitioner, under B on page 19 of his brief and again on page 34, seeks to have this Court hold the order of the California District Court,

affirmed on appeal, res judicata as to the matters and things not urged before or decided by the California Court, but upon which the Referee disallowed petitioner's claim, under the theory that the order is res judicata not only as to the matters which were there decided but as to all matters which might have been litigated therein. This doctrine does not apply in this Court and especially in a case like this. *United Shoe Machinery Corporation, et al* vs. *United States of America*, 258 U. S. 451, 66 L. Ed. 708; *Chris Larsen* vs. *Northland Transportation Company*, 292 U. S. 20, 78 L. Ed. 1096.

But if such a rule has application in matters of this kind, it can have no force in this case for the reason that it is apparent from the opinion of the Ninth Circuit Court of Appeals, affirming the order denying petitioner's motion, that that Court considered the appeal only as to the bankrupt and not the Trustee, for that Court said in its opinion that the Trustee could not have had a defense to the petitioner's original cause of action because he was not a party to that suit. Further than this, the truth of matters set up in a tendered answer, are not in issue and cannot be litigated upon hearing of motion to vacate judgment. The evidence which respondents introduced before the Referee in support of their objections to petitioner's claim was not proper, competent nor admissible upon the hearing of Trustee's motion to vacate the judgment. Those were matters set up in the proffered answer and which Trustee

contended he could prove if the Court permitted him to intervene, be made a party to the litigation and be given an opportunity to present evidence going to the merits of the matter. But, all this he was denied. And the Circuit Court of Appeals says that this the Trustee was properly denied because he was not a party to the litigation.

There is the further answer to this contention and that is the doctrine enunciated in *Pepper* vs. *Litton*, supra, and followed many, many times that the bankruptcy court, being a Court of equity, looks to the substance and not to form; does not permit technical considerations, as here contended for, to prevent the due and proper administration of justice.

There is the further contention advanced by petitioner, repeated many times, that the decision of the Tenth Circuit Court of Appeals herein, is in conflict with the decision of the Ninth Circuit Court of Appeals affirming the order of the District Court denying the Trustee's motion for leave to intervene, etc. This upon the theory, first, that the Ninth Circuit Court of Appeals, for the purposes of appeal, held that the Trustee's action amounted to an independent action; and second, that, even though the issues upon which the Referee decided the matter were not urged, heard nor decided by the California Court, nevertheless, under the rule above referred to, the order denying Trustee permission to intervene, etc., will be held conclusive not only as to all matters which were litigated but which might have been litigated. We have answered this proposition. The

Trustee was not a party to the California litigation—the Ninth Circuit Court so held; the only issue decided by that Court was the validity of the summons; the issues upon which the Referee decided against petitioner were not and could not have been urged, heard, litigated and adjudicated in the proceedings in the California Court. There is the further reason why this contention of the petitioner can not be sustained. In the California Court, the Trustee was seeking permission to intervene so he could file an answer attacking petitioner's judgment, while in the Bankruptcy Court and as decided by the Tenth Circuit Court of Appeals, the matters there arose upon respondents' objections to petitioner's claim in bankruptcy—two distinct, separate matters, proceedings, claims and adjudications.

The doctrine of *In Re James A. Brady Foundry,* supra, *Pepper* vs. *Litton,* supra, and *In Re Powers,* 114 Fed. 2d 69 (7th Cir.), has particular application here. These cases demonstrate the soundness of respondents' contention that the order of the California District Court upon the motion of the Trustee and the decision of the Ninth Circuit Court of Appeals affirming such order, cannot form the basis of a well-grounded plea of res judicata in this case. And the principal reason this is so is that the merits of the objections to the petitioner's claim were not inquired into, were not heard, were not urged before and were not decided by the California Court and there had been no adjudication upon the merits of this controversy by any court prior to the time that the Referee in Bankruptcy entered the order denying petitioner's claim.

Point IV.

By acquiescing in the order of August 26, 1940, staying proceedings in bankruptcy; filing objections to claim and participating in hearings thereon before Referee in Bankruptcy, petitioner submitted to jurisdiction of Bankruptcy Court and is now estopped to question that jurisdiction.

By the order of August 26, 1940 (R. Vol. 1, p. 29-31), the Referee stayed proceedings in bankruptcy, permitted creditors to contest each other's claims; fixed time for filing contests and provided that such contests should be conducted by the creditors and at their expense. No appeal or writ of review was taken from this order. Petitioner contested claims of other creditors. *M. E. Heiser* vs. *Marguerite B. Woodruff, et al,* supra. He urged these objections and participated in the hearing of objections to his claim. Respondents submit that he should be estopped now from claiming that the Bankruptcy Court was without jurisdiction to hear the objections urged thereto. True, he objected at the time the matter came on for hearing but that was several months after the order of August 26, 1940, had become final and after he had failed to seek a review thereof. *Remington on Bankruptcy*, 3d Ed., Section 2351, Vol. 5.

Point V.

This case, being here for all purposes, respondents ask that the Court consider the evidence in support of respondents' objections to petitioner's claim for the purpose of determining whether the order of the Referee in Bankruptcy denying the claim is reasonably supported by competent evidence and should be affirmed.

Because this case is one invoking the jurisdiction of equity and because it has been pending for nearly seven years and should be disposed of, respondents labor in the hope that this Court will see fit to consider, not only the question of the power and jurisdiction of the Bankruptcy Court to entertain and hear the objections to the petitioner's claim, but also the evidence introduced by the respondents in support of their objections and which the Referee in Bankruptcy found sufficient to compel him to deny the claim in full.

A case here for one purpose is here for all purposes.

Donovan vs. *Pennsylvania Co.*,
199 U. S. 279, 50 L. Ed. 192;

Panama R. Co. vs. *Napier Shipping Co.*,
166 U. S. 280, 41 L. Ed. 1004;

Puerto Rico vs. *Havemeyer*,
296 U. S. 506, 80 L. Ed. 357;

Story Parchment Co. vs. *Paterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544.

As heretofore stated and supported by authorities, the order of the Referee disallowing petitioner's claim carries

with it a presumption of correctness and sufficiency of evidence to sustain the findings of Referee.

In Re Farmer's Dairy Asso., supra, *Chambers* vs. *Continental Trust Company*, supra; *McCullough* vs. *Davenport Savings Bank*, supra;

Upon review the findings of the Referee will not be disturbed if reasonably supported by the evidence. *Remington on Bankruptcy*, 3rd Ed., Vol. 8, Section 3669.

In support of their plea that this Court affirm the action of the Referee in disallowing petitioner's claim, respondents risk burdening the time of this Court and this brief with the following brief resume of the high points in the evidence which they submitted to the Referee to sustain their objections to petitioner's claim.

The first evidence which respondents were able to produce with reference to the plan and scheme of the petitioner is the deposition of John Greble Moran (R. Vol. 2, p. 658). Mr. Greble, a Los Angeles merchant, testified that in April or May of 1928 he met the petitioner at the witness' place of business. Witness had been asked to appraise some antique jewelry for Aimee Semple McPherson, which petitioner was selling Mrs. McPherson. Petitioner came to him and asked him to raise his appraised value of the jewelry and promised him a good cut on it. Notwithstanding the rejection of his offer by witness, petitioner returned a few days afterwards and sought to prevail upon witness to induce the Bankrupt to put up between twenty-five and

fifty thousand dollars to finance the petitioner in business and promised the witness 40% of whatever money he could get Woodruff to advance. He also endeavored to get witness to contact other men for the same purpose. Failing in this and apparently learning that Walter Calvin Smith was a friend of Woodruff, Heiser went to him and through Smith obtained an introduction to Woodruff. What transpired within the next few weeks, which was in the summer of 1928, is detailed in the testimony of the bankrupt (R. Vol. 1, p. 642); the testimony of his wife (R. Vol. 1, p. 619); the testimony of Herman Woodruff (R. Vol. 1, p. 625); the deposition of Gean Kosto (R. Vol. 2, p. 661), and the deposition of Howard Woodruff (R. Vol. 2, p. 662). This evidence shows that Smith, who was in the jewelry business, was indebted to Woodruff and that Heiser representing that he had certain industrial sapphires of the value of around $40,000.00 which he was willing to put into Smith's business, after numerous calls upon Woodruff and much insistence upon Heiser's part, prevailed upon Woodruff to loan a new corporation to be organized by Heiser and Smith, the sum of $10,000.00, upon the agreement that after the corporation was organized Heiser would go to Australia with Herman Woodruff, so that Herman Woodruff could inspect his mines in Australia for the purpose of determining whether the Bankrupt would be interested in advancing additional funds for development purposes. Instead of meeting Herman Woodruff in two weeks as planned, Heiser, respondents con-

tend, took the bankrupt's $10,000.00 and went to Europe, where he stayed for more than two years.

It is alleged in the complaint upon which the judgment was rendered, that the petitioner left the gems described in his complaint in the United States National Bank at Los Angeles with instructions to the bank to let Woodruff and Smith have these semi-precious stones when they called for them and that the arrangement between the parties was that the more valuable stones were to be sold for Heiser's account by Woodruff and Smith and the money realized from the sale of these stones placed to Heiser's credit in the bank. (J. A. Seelye, the trust officer of the bank, testified that this material was placed in the bank in the name of Heiser; that no one else had access to it and that none of it was taken out by Woodruff or Smith; that Heiser wanted to place a value on it and wanted the bank to give him a certificate as to value, but that the material looked like country rock to him and he would not place a value on it without it being appraised; that Heiser would not have it appraised (R. Vol. 2, p. 652-5)).

The first communication from Heiser after he went to Europe is the letter shown at (R. Vol. 1, p. 301). It will be noted that the petitioner in this letter makes no inquiry of Smith with reference to the properties which he claims to have left in the bank.

Before going to Europe and as a part of his arrangement with Smith, Heiser organized the Golden State Gem

Company of Nevada, a $5,000,000 corporation. He then authored the prospectus shown at page 297 of Volume 1 of the record. In his letter at page 301 of the record he makes reference to the stock in this company and to its sale and to his teddy bears, but no reference whatever to $164,000.00 worth of gems which he had left in charge of Woodruff and Smith, two men whom he had known less than 60 days.

Petitioner alleged in his complaint that he was in Europe trying to sell the gems which were to be cut and produced by the Golden State Gem Company, but the letter at page 318 of Volume 1 of the record written from Europe would seem to disprove this contention.

The material which petitioner shipped to Los Angeles in pursuance of his agreement with Woodruff and Smith and which was placed in the bank there is the same material shown in the bill of lading at (R. Vol. 2, p. 1117) and valued at $500.00.

In September, 1929, the Golden State Gem Company went into bankruptcy, the petitioner was still in Europe. He had his brother-in-law, E. A. Lobree, file a claim for him for this same material in the bankruptcy matter and the material was then valued at $30,250. The claim was filed by Lobree under power of attorney from the petitioner, and Lobree testified that petitioner was the only source of information he had with respect to the character and value of the gems he claimed to have lost (R. Vol. 2, p. 677). This claim was denied (R. Vol. 2, p. 1187).

Prior to the institution of this bankruptcy proceedings the petitioner had testified in three different matters in California respecting the source, possession, character, quality and value of the material which he claimed to have shipped from San Francisco to Los Angeles and stored in the bank there and which he says the bankrupt and others subsequently converted and for which he obtained judgment. Respondents produced transcripts of this testimony, all of which was received in evidence.

In his testimony upon the hearing to determine value given in June, 1939, before the California District Court, petitioner testified that the material for which he obtained judgment was shipped to the Panama-Pacific Exposition at San Francisco in 1914 by the Queensland Government; that it was his property; he loaned it to that government for exhibition at the exposition; he was in charge of the exhibit for the Queensland Government and after the exposition closed he kept his property in the United States, stored it in the Wells Fargo Nevada Bank Safe Deposit Department, in San Francisco, where it remained from 1915 to 1928 (R. Vol. 2, p. 1129-33 and 1153). He repeated this testimony as to the source of this material in his deposition taken by the respondents (R. Vol. 2, p. 755-9). Also in exhibit A, page 1171 of the record. Introduced R. Vol. 1, p. 638.

By the depositions of D. B. Edward, executive secretary of the Australian government commission to the Panama-

Pacific International Exposition (R. Vol. 2, p. 957), the deposition of A. A. Staines, under-secretary, Department of Mines of Queensland government (R. Vol. 2, p. 964), and the deposition of Leo. J. Jones, Government geologist and representative of the State government of New South Wales at the exposition and the exhibits attached thereto (R. Vol. 2, p. 976), it is shown that petitioner had no connection with the Panama-Pacific Exposition so far as the governments of Australia or Queensland were concerned; that he did not loan any gems or other material to those Governments for exhibition; that he received permission to erect and operate a lapidist's bench within the Mineral Court of the Australian Pavilion 8 x 4 feet, from which he was ousted after about a week's time because he violated the rules of the Exposition; that he had no sapphires or other gems on exhibit there and the Governments exhibited no such minerals belonging to him.

The answer to interrogatory number 3 on page 965 of Volume 2 of the record, from the official records of the Queensland government shows the total gem exhibit at the Exposition by that Government to have been approximately 150 oz. of a total value of approximately 1000 pounds or $5000.00 against petitioner's fantastic claim of approximately 40,000 ounces of a value of $164,000.00. The values of $8 to $15 per ounce shown on pages 968-73 of Volume 2 of the record contrast with his fantastic values of $40, $50 and $60 an ounce for the same kind of material.

By the deposition of D. K. Stern (R. Vol. 2, p. 669), it was shown that petitioner had no deposit of the kind claimed by him in the Wells Fargo Bank & Trust Company or the Wells Fargo Nevada National Bank in San Francisco at any time between 1915 and 1928.

By the deposition of the brother-in-law Lobree, taken by creditors (R. Vol. 2, p. 677), it was shown that petitioner was buying and selling sapphires and other minerals from 1915 to 1928; making trips back and forth to Australia to get this type of merchandise. (During this time petitioner claimed he had approximately 40,000 ounces or more than 3300 pounds, jeweler's weight, of the same kind of merchandise, being the material for which he obtained judgment, in storage in the San Francisco bank).

By the petitioner's own testimony, the material which he claimed he possessed was a strategic war material. He was a subject of Great Britain, living in the United States and despite the fact that this type of material was a critical war need from 1914 to 1919 (R. Vol. 2, p. 1160), he kept it locked up in the bank while at the same time he was selling this type of material to Germany during the first world war. In other words, trading with the enemy. While this claimed material was allegedly in the bank at San Francisco, and just a year prior to the time that he claimed it was shipped to Los Angeles, he wrote the letter shown at page 933 of Volume 2 of the record. There he was trying to borrow $6000.00 from a feeble old woman for the purpose

of organizing a stock company to raise money to mine sapphires and other minerals to supply what he claimed was then an unsatisfied market demand. At the time he wrote this letter he claims to have had $164,000.00 worth of this material in the bank in San Francisco; material of a staple value and easily salable and upon which he could easily have realized its value.

In the bill of lading this property was valued at $500.00. In the petitioner's claim in California Bankruptcy Court it was valued at $30,250.00. This claim was filed on September 20, 1930. Petitioner testified in support of the claim in April, 1932. He then claimed that he had 30,000 ounces of industrial sapphires valued at $1.00 an ounce or $30,000.00 (which was the amount of his claim), 1000 ounces of assorted sapphires valued at $40.00 an ounce or a total of $40,000.00, 1200 ounces of opals valued at $15.00 an ounce or a total of $18,000.00, 1000 ounces of zircons valued at $10.00 an ounce or $10,000.00, one piece of jade valued at $1000.00, a total of 33,200 ounces of minerals and one piece of jade, at a total value of $99,000.00, of all of which he had been deprived.

In his verified complaint in case 5587 J, filed May 11, 1932, which was less than thirty days after he testified in the Bankruptcy Court, he listed 35,000 ounces of industrial sapphires instead of 30,000 ounces, 4400 ounces of other sapphires, opals and zircons and one piece of jade 28 pounds, being a total of 39,400 ounces, one piece of jade,

which he valued at more than $160,000.00, as against 33,200 ounces and one piece of jade of the value of $99,000.00, one month previous to that time (R. Vol. 2, p. 1040).

In October, 1932, some five months after case 5587 J was filed and six months after he testified in the California Bankruptcy Court, his deposition was taken in the case of *Heiser* vs. *Graves*, No. 238-348, Superior Court at San Francisco (R. Vol. 2, p. 1072). This property was brought into question there. He identified it at that time as to quantity and quality as 40,000 ounces of sapphires, 1200 ounces best blue sapphires, 1200 ounces of opals, 1000 ounces of star sapphires, 1000 ounces of zircons—a total of 44,400 ounces (R. Vol. 2, p. 1079). It will be noted that in his testimony in the California bankruptcy matter and in his complaint in 5587 J he made no mention of the 1200 ounces best blue sapphires about which he testified in the Graves case.

In the hearing before the California District Court to determine value held in June, 1939, he testified he had 35,000 ounces of mechanical industrial rough sapphires, valued from 80 cents to $1.36 per ounce which, at an average of $1.08 per ounce, would be $37,800.00; 1200 ounces of blue sapphires which had risen in price to $60.00 an ounce, $72,000.00; 1000 ounces of star sapphires which had risen to $50.00 an ounce or $50,000.00; 1200 ounces of opals at $15.00 an ounce, $18,000.00; 1000 ounces of zircons at $10.00 an ounce, $10,000.00, and one piece of jade now worth from $1000.00 to $5000.00 or an average of $3000.00—a total value

of $190,800.00. It should be borne in mind that all of these quantities and vaules were fixed as of between August, 1928, and May, 1929, the time of the alleged conversion.

In these four instances the petitioner made oath to having four different quantities, four different qualities, of four different values. He had no records or books or evidence of any kind or character to show his ownership or possession of any of this property, except the bill of lading which was introduced in evidence by the creditors. He did not appear at any of the numerous hearings in this matter in the Oklahoma courts.

When the petitioner's deposition was taken by the creditors, at considerable expense to them (R. Vol. 2, p. 727-958), he would not appear before the notary to examine his deposition for the purpose of ascertaining whether any corrections should be made in it and to sign it. At pages 915 to 923, inclusive, Volume 2 of the record, are shown the proceedings incident to the futile endeavor of the notary to get the petitioner to check over his deposition and sign it.

Attached to petitioner's deposition are 10 documents bearing his signature (R. Vol. 2, p. 933-951). In the taking of his deposition he refused to identify his signature on any of these instruments and it became necessary for respondents to hire a handwriting expert to prove their genuineness (R. Vol. 1, p. 630). Among the exhibits thus introduced were a number of certificates of stock in the Golden State Gem Company of Nevada, issued to petitioner and

which were issued to him in payment of the material which he shipped to Los Angeles and in which transaction he transferred title to this material to the Golden State Gem Company of Nevada.

This is just a brief resume of the more important facts established by respondents in support of their objections to petitioner's claim. All of the evidence covers several hundred pages of the record. So much we have referred to for the purpose of establishing that the order of the Referee disallowing petitioner's claim is reasonably supported by competent evidence, all of which was undisputed and undenied. And upon this evidence respondents ask this Court to affirm the order of the Referee in Bankruptcy disallowing petitioner's claim so that this matter may be concluded at an early date.

CONCLUSION.

Petitioner's attack upon the doctrine of *Boynton* vs. *Ball* and *Pepper* vs. *Litton*, supra, is evidently an attempt to get this Court to overrule these authorities and the doctrine upon which they are based—the doctrine that a Bankruptcy Court has full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. To do this the Court would have to overrule not only the above authorities but also *Lesser* vs. *Gray*, *Prudence Realization Corporation* vs. *Giesl*, *U. S. F. & G. Co.* vs. *Bray*, supra, and

others. No particular reason is advanced why this should be done. The argument which seeks it is based upon the theory that res judicata is a doctrine without exception and is sacrosanct. But such is not the case. While it is a doctrine of peace, it is not to be applied to the denial of justice, to deprive one of a just defense or to close the Courts to all inquiry into the truth. Nor where there has been no adjudication of the controversy upon its merits. *Russell* vs. *Place*, supra; *Mercoid Corporation* vs. *Mid-Continent Investment Company*, supra; *Hazel-Atlas Glass Company* vs. *Hartford-Empire Company*, supra. The proper administration of the Bankruptcy Act is clothed with a public interest. The estate is in the nature of a public trust and the Trustee is an officer of the Court.

The doctrine of the cases which petitioner seeks to avoid has been the law of this Court since 1887. It is a true interpretation and pronouncement of the intent and purpose of the Bankruptcy Act and of the practice of equity, by which the Courts are guided in enforcement of the Bankruptcy Act. No good reason is shown why this wholesome doctrine should now be abandoned nor why it should not apply in this case. Respondents say that here is a specific case for its application. Here, a number of creditors with allowed claims, with the right to share in the property of the Bankrupt as the claim of each is measured by the total assets of the Bankrupt estate, would be prejudiced and defeated by a claimant whose claim is not based upon a real

debt, is without merit and to whom Bankrupt was not and is not indebted. The basis of petitioner's claim thus to subvert the purposes of the Bankruptcy Act is that by default he obtained a judgment against Bankrupt representing the amount of his claim. To this respondents counter, that if the cause of action upon which petitioner obtained his judgment had been subjected to the light of truth and justice he would not have obtained his judgment and would have no claim. And when his claim was subjected to the light of truth and justice it was shown to the satisfaction of the Chancellor on the Bench that his claim was not based on truth and justice, that the Bankrupt was not indebted to him; that his claim was without merit and that the judgment upon which his claim is based was obtained by the use of perjured testimony.

The facts in this case are in accord with *Pepper* vs. *Litton*, supra. Almost the same situations exist with reference to proceedings before and after bankruptcy. There the judgment creditor would have had his claim allowed under the doctrine of res judicata because the Trustee had instituted an independent and separate action in the State Court to vacate and set aside his judgment and was unsuccessful in doing so. But there this Court said "no" because the merits of the objections to the claim were not inquired into, heard nor adjudicated in the State Court proceedings. The same is true here as found by the Tenth Circuit Court of Appeals and as respondents have demon-

strated in their brief. Until the Referee in Bankruptcy heard the objections to petitioner's claim and the evidence in support thereof, which is contained in approximately 800 pages of the record, in no Court had the merits of the cause of action upon which petitioner's judgment is based been attacked on the grounds that at the time of the rendition of the judgment Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser and that he thus committed a fraud upon the Court and the parties. This proof was made before the Referee not in an attack upon petitioner's judgment but in opposition to the allowance of his claim in bankruptcy upon the theory and for the purpose of showing that his claim is not based upon a real debt and is without merit These matters were not adjudicated before by any Court.

We have emphasized that the proceedings before the Referee were initiated upon the claim of petitioner; the objection there urged and heard were to his claim. The disallowance of his claim does not affect his judgment. It still remains of record and in force, unless discharged in bankruptcy. Being based upon fraud and conversion there may be some question as to whether bankruptcy can discharge it.

In the proceedings before the Referee the petitioner had every opportunity to prove and show the merits and worth

of his claim and that it is based upon a real debt. He could have done this without waiving or prejudicing his objections to the jurisdiction of the Referee in Bankruptcy (unless waived as contended under Point IV hereof). The hearings on the objections to the claim extended over a period of many months. At one time petitioner filed in the United States District Court for the Eastern District of Oklahoma his complaint seeking injunctive relief against the respondents proceeding with the hearings before the Referee (R. Vol. 2, p. 111). A temporary injunction was granted which was dissolved upon trial, the District Court finding that it had no jurisdiction to entertain the action (R. Vol. 2, p. 1230-5). Respondents do not know why the petitioner refused to introduce evidence in support of the merits of his claim, unless it be for the reasons he did not identify the ten documents which he signed and which were introduced upon the taking of his deposition (R. Vol. 2, p. 933-51), or the same reasons why he did not appear in any of the hearings in the Oklahoma Courts, or the same reason that he did not respond to the entreaties of the notary public who took his deposition to read it and sign it (R. Vol. 2, p. 915-924). But, be this as it may, the fact remains that he has had his day in Court and has failed to meet the demands of right and truth and justice. For these and the other reasons herein submitted respondents ask that this Court not only sustain the judgment of the Tenth Circuit Court of Appeals herein, but that it also affirm the action

of the Referee in Bankruptcy disallowing petitioner's claim so that this matter may be concluded at an early date.

All of which is most sincerely and most earnestly submitted.

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In the
Supreme Court of the United States
OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

VERSUS

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE B. WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELL WOODRUFF AND LEONARD J. WOODRUFF,
Respondents.

PETITION FOR REHEARING.

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MAY, 1946.

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INDEX

PAGE

I. The judgment of this Court overlooks important issues and matters of proof of a decisive nature 2

Authority:—

Opinion of this Court, L. ed. Adv. Ops., Vol. 90, No. 13, Pages 828-838 3

II. The judgment of this Court that this vital issue was adjudicated against Trustee and that such adjudication is binding here is erroneous 6

Authority:—

Opinion of this Court, Page 834 6

34 Corpus Juris 55 6

The judgment of this Court is contrary to the rule of Russell v. Place et al., 94 U. S. 606; DeSollar v. Hauseombe, 158 U. S. 216 8

Authority:—

Opinion of this Court, Page 832 9

Russell v. Place, et al., 94 U. S. 606 9

34 Corpus Juris 1518(b), Page 1074 9

The rule in Cromwell v. Sac County, 94 U. S. 352; Grubb v. Public Utilities Commission, 281 U. S. 479; Chicot County Drainage District v. Baxter State Bank, 308 U. S. 375 11

Authority:—

Opinion of this Court, Page 834 11

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 375 12

Cromwell v. Sac County, 24 L. ed. Page 198 11

Grubb v. Public Utilities Comm., 281 U. S. 479 12

PAGE

The Rule in Pepper v. Litton, 308 U. S. 306 12

Authority:—

Opinion of this Court, Page 835 13

Boynton v. Ball, 121 U. S. 457 16

Chandler v. Thompson 15

In re Continental Engine Co. 15

In re Thompson 15

Pepper v. Litton, 308 U. S. 306 ..... 13, 14, 16

The hearing on values before the California District Court 16

Authority:—

Opinion of this Court, Page 833 16

The power of the Bankruptcy Court to subordinate claims 17

Authority:—

Golden State Bankruptcy case 18

Conclusion 19

Authority:—

Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U. S. 238 20

Certificate of Counsel 23

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Respondents.

PETITION FOR REHEARING

This petition for rehearing is filed pursuant to permission granted by Rule 33 of the Rules of this Court. On May 16, 1946, an order was entered herein by Mr. Justice Rutledge extending the time for filing to and including May 25, 1946.

Respondents respectfully ask that they be granted a rehearing herein; that the judgment entered herein on April 22, 1946, be set aside, the judgment of the Circuit Court of Appeals for the Tenth Circuit affirmed and the cause remanded to the District Court for findings of fact in accordance therewith. In support of and as grounds for such petition for rehearing, respondents say:

I.

THE JUDGMENT OF THIS COURT OVERLOOKS IMPORTANT ISSUES AND MATTERS OF PROOF OF A DECISIVE NATURE

Respondents most respectfully submit and contend that the record discloses the Referee disallowed petitioner's claim because they proved by competent, convincing and undisputed documentary and oral evidence that petitioner was never possessed of the commercial stones the alleged value of which forms more than four-fifths of his total judgment. Respectfully, but frankly, respondents feel the Court has entirely overlooked this most important fact—the basis of their attack upon the claim before the Referee and the issue and proof upon which the Referee disallowed the claim.

If petitioner never owned and never possessed the greater part of the property he alleged was converted and which forms the major part of his judgment, then such property could not have been converted and he could not have been damaged by bankrupt and could not have sustained the claimed loss and was not and is not entitled to a judgment therefor nor to collect thereon.

In the judgment we find this Court's concept of the issues in the following excerpts (For convenience our references will be to the judgment reported in L. ed. Adv. Ops., Vol. 90, No. 13, Pages 828-838):

(P. 829) "Respondents objected to allowance of the claim on the ground that, so far as relevant, the judgment was procured by fraud, that is, *by perjured testimony as to the value of the property alleged to have been converted* by the defendant (Italics ours).

(P. 831) "* * * that petitioner's testimony, particularly as to the value of the converted property, was perjured. * * *

(P. 833) "* * * procured a default judgment against the bankrupt for an amount in excess of their value.

(P. 823) "In his application to the bankruptcy court * * * the bankrupt had represented that * * * 'the raw gems described * * * were at no time of the value of $164,000 or any comparable value.'

(P. 833) "As already noted the papers on the motion in behalf of the trustee * * * set up that the judgment was based on '*petitions values*' (Italics ours).

(P. 833; Headnote 7) "Examination of the record * * * makes plain the nature of the fraud charged against petitioner. Shortly stated it is that in the course of transactions with petitioner the bankrupt acquired possession of and converted to his own use a quantity of worthless minerals, owned or previously owned or possessed by petitioner, who, by means of perjured allegations in the complaint and perjured testimony as to their amount and value, procured a default judgment against the bankrupt for an amount in excess of their value."

A claim of "fictitious values" as to allegedly converted property proceeds upon a different premise from a claim that petitioner never owned the semi-precious gems described in his complaint, was never possessed of them and never lost them. If, as respondents seriously contend, these facts were conclusively established before the Referee, then the judgment of this Court permits petitioner to profit by a diabolical fraud at the expense of the other creditors of the bankrupt estate.

The proof of his non-ownership, non-possession and non-loss of this property was made in various ways. As a basis respondents took petitioner's testimony given on three other occasions in which he testified that he owned these gems in Australia prior to the Panama-Pacific Exposition; loaned them to the Queensland Government for exhibition at the Exposition; was sent here by that Government as its representative; attended the Exposition as such; after it closed, moved his gems to San Francisco and stored them in the Wells Fargo Nevada Bank from 1915 to 1928, when they were removed and shipped to Los Angeles (see Respondents' Brief, Page 41). Then the testimony referred to on Pages 41 to 43 of respondents' brief, not repeated for the sake of brevity, showing he had no such connections, no such gems, no such property. Then the various discrepancies in volume, quantity, weight, pointed out on Pages 44-46 of brief, again not repeated for brevity's sake. This proof not for the purpose of showing fictitious values but for the purpose of showing lack of credibility, lack of stability, for the support

of the claim of non-ownership and non-possession, lack of reliability in such claim.

The evidence of John Greble Moran (Brief, Page 37) in support of proposition that if petitioner had been possessed of claimed property he would not have been guilty of such conduct.

The letter at Page 933 of the record to show that if he had had this valuable property in storage at San Francisco at that time he probably would not have been trying to borrow money to get his mines running to produce like materials to fill an unsatisfied market demand.

The evidence with reference to the need for this type of material from 1914 to 1918, when it was a scarce item, badly needed by petitioner's native country and the country in which he was living.

There is a large volume of other evidence, direct and circumstantial, sufficient to convince the Referee that this claim should not be allowed. No doubt this Court did not and does not have time to review this evidence. No doubt the Circuit Court of Appeals found itself similarly situated. The District Court can make findings of fact thereon and then the full matter can be reviewed.

II.

THE JUDGMENT OF THIS COURT THAT THIS VITAL ISSUE WAS ADJUDICATED AGAINST TRUSTEE AND THAT SUCH ADJUDICATION IS BINDING HERE IS ERRONEOUS

(P. 834; Headnote 9) "But here the alleged fraud was put in issue and the issue was decided against the trustee, for failure of proof."

This can only have reference to the statement in the trustee's notice of motion to intervene, etc. (R., Vol. 1, Page 275) that the motion will be made "upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." This is the ground of fraud to which the Circuit Court of Appeals for the Ninth Circuit apparently had reference in its statement that fraud was alleged, not proved, and apparently abandoned. The effect of this Court's judgment, as respondents read it, is that because the trustee made this allegation in his notice of motion, and because the Circuit Court found that it was not proved and apparently abandoned, the creditors of the bankrupt were subsequently precluded under the doctrine of *res judicata* from raising, in objection to the claim based upon the judgment, the charge that petitioner did not own, was not possessed and could not have lost the property for which he obtained the major part of his judgment.

The entry of a judgment is a ministerial act; 34 Corpus Juris 55. The claim of fraud in connection with the entry of the judgment is probably indefinite and uncertain. Respond-

ents urge it is not sufficient to embrace the objections to the claim which the Referee sustained, even if they are to be precluded by the harsh doctrine that they are now estopped to prove their case as to matters urged by the trustee in his notice of motion to vacate but which were not heard nor decided upon their merits. But, let us assume that in support of this statement in his notice the trustee had submitted proof of non-ownership, non-possession and non-loss of this property and based thereon the Court had vacated the judgment, would the petitioner herein then be bound and precluded by such finding from contesting the issue upon the trial of the case? Would the order vacating the judgment have settled all the issues and the trustee then *ipso facto*, have been entitled to a judgment in his behalf? The trustee further stated in his notice that the motion would be made upon the further ground that the trustee had a good defense to the action but was prevented from presenting it by fraud, etc. (R., Vol. 1, Page 277). As respects this phase of the case, the Circuit Court of Appeals, Ninth Circuit, held that trustee couldn't have had a defense to the action because he wasn't a party to it. It would seem from this statement that the Circuit Court did not regard the trustee as a party to the litigation before it and, with respect to the charge of fraud alleged, not proved and abandoned, the Circuit Court may have had reference to the matters urged by the bankrupt.

But, in any event, the facts remain that the basic charge of respondents was not presented to, was not heard by, and

was not adjudicated by the California courts. And respondents respectfully submit that such matters could not have been presented to and decided by the California District Court on the trustee's motion to vacate and even if it had been so presented and decided, and the judgment vacated on such proof, as stated, such adjudication would not have been on the merits and would not have precluded either party from further litigation of this vital point. And it is earnestly submitted that even though this issue should be held to have been included in the statement of "fraud in the entry of the judgment," still, such fact can not operate to estop and bar these respondents from attacking the judgment on its merits before the Referee on the stated grounds and upon the grounds for which Referee disallowed the claim.

THE JUDGMENT OF THIS COURT IS CONTRARY TO THE RULE OF RUSSELL V. PLACE ET AL., 94 U.S. 606; DeSOLLAR V. HAUSEOMBE, 158 U.S. 216

The gist of the holdings in these cases and others following them is that "it is the essence of estoppel by judgment that it is certain that the precise fact was determined by the former judgment" and "to determine the effect of a former judgment pleaded as estoppel, two questions must be answered: (1) was the former judgment rendered on the same cause of action? (2) If not, was some matter litigated in the former suit determinative of a matter in controversy in the second suit?"

To answer these questions the Court will look to the pleadings, the issues, documents, stenographic reports or minutes of testimony, the evidence submitted, the respective contentions of the parties, the rulings and findings of the Court, etc.; 34 Corpus Juris 1518 (b), Page 1074.

> "To apply the judgment, and give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible."
>
> *Russell* v. *Place*, *supra*.

In order to show just what matters were presented to the California courts in the proceedings out there, the respondents, notwithstanding the burden was not theirs, brought before the Referee all the documentary evidence available to show just what transpired on the hearing of bankrupt's first motion to vacate, the hearing on values in June, 1939, and on the trustee's and bankrupt's motion for permission to intervene, etc. These matters are referred with citations at Pages 21 to 23 of respondents' brief. They show, respondents most respectfully submit, that the "precise fact" was not presented to, was not heard by, and was not decided by the California courts in any of the proceedings out there—the "precise fact" being the non-ownership, non-possession and non-loss of the semi-precious gems claimed by petitioner.

Headnote 2, Page 832, this Court recognized the rule that the bankruptcy court "may exercise equity powers to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud has not been previously adjudicated" and observes with reference to the principle of *res*

judicata that it applies in bankruptcy "when one appears in court to present his case, is *fully heard*, and the contested issue *is decided* against him." But this case doesn't fit this law. The issue was not made, was not heard, was not decided. The Referee is the only court that has heard this evidence and passed on the merits of the claim of non-ownership, non-possession and non-loss. In no other court was the issue joined, the evidence heard, the issue decided. Consequently, the rule which has application here is the first quotation in this paragraph from the judgment of this Court. The bankruptcy court does have jurisdiction and power to inquire into a fraudulent judgment where the issue of fraud has not been previously adjudicated. And in this case, the issue would have had to have been decided against the trustee, on its merits, admitting he represented the creditors, to be binding upon them.

And respondents cry out in their distress, that this record can be searched from end to end and it will not be found that this issue was raised, heard and decided prior to bankruptcy but on the contrary the record shows that it was not raised, heard nor decided by any of the California courts. Even if it be held to have been included in the trustee's statement, "fraud in the entry of the judgment," it was not heard and was not decided in that proceeding.

THE RULE IN CROMWELL V. SAC COUNTY, 94 U.S. 352; GRUBB V. PUBLIC UTILITIES COMMISSION, 281 U.S. 479; CHICOT COUNTY DRAINAGE DISTRICT V. BAXTER STATE BANK, 308 U.S. 375

Headnote 9, Page 834. Quoting:

"But here the alleged fraud was put in issue and the issue was decided against the trustee, the bankrupt and those whom they represent or who claim under them, for failure of proof. After two proceedings, in one of which the bankrupt and in the other of which the bankrupt and his trustee, sought, and were free, to prove that the judgment was based on *fraudulently alleged, fictitious values*, and in both of which the decision was against them, the principles of *res judicata* preclude the revival of the litigation in the bankruptcy court" (Italics ours).

Cromwell v. *Sac County* says:

"In former case, the judgment, if rendered *upon the merits*, constitutes an absolute bar to a subsequent action" (Italics ours).

It is not contended that any judgment on the merits of any charge of fraud was ever made by any of the California courts. The nearest approach to any such adjudication was that by the Circuit Court of Appeals of the Ninth Circuit wherein it said that the issue of fraud in the entry of the judgment was raised by the trustee, not proved and apparently abandoned. An abandonment of an issue can not be held to be an adjudication of that issue upon its merits. We quote from *Cromwell* v. *Sac County*, 24 L. ed. at Page 198:

"In commenting upon a decision cited in that case, Lord Ellenborough, in his elaborate opinion, said: 'It is not the recovery, but the matter alleged by the party, and upon which the recovery proceeds, which creates the

estoppel. The recovery of itself in an action of trespass is only a bar to the future recovery of damages for the same injury; but the estoppel precludes parties and privies from contending to the contrary of that point or matter of fact, which, having been once distinctly put in issue by them, or by those to whom they are privy in estate or law, has been, on such issue joined, solemnly found against them."

And the Court denies the application of the doctrine for which this case is cited as authority.

In *Chicot County Drainage Dist.* v. *Baxter State Bank*, a full hearing was had upon the issues raised, evidence heard and judgment rendered upon the merits of the controversy. Likewise in *Grubb* v. *Public Utilities Commission*, where the Court pointed out that the rule only obtains where there is an adjudication upon the merits of the first controversy.

THE RULE IN PEPPER V. LITTON, 308 U.S. 306

As we understand this case the trustee objected to the allowance of the claim upon the ground that the book entries showing an indebtedness by the corporation to the judgment creditor were false; that such corporation was not indebted to the judgment creditor for the claimed amount and the judgment was obtained by perjured testimony and did not represent a real debt. For these reasons the Court said the bankruptcy court could inquire into the claim, go behind the judgment to ascertain if it was obtained by fraud and perjury and not founded on a real debt and that the fact that the trustee instituted an action in the state district court to set

aside the judgment, lost there, appealed to the Supreme Court of the state and lost there, did not constitute *res judicata* of the jurisdiction of the bankruptcy court because this issue was not raised in the state court. Likewise here, except that the prior proceedings here were in the Federal courts instead of the state court. On this phase of the matter we can not distinguish *Pepper* v. *Litton* and the cases upon which it is based.

Headnote 12, Page 835, referring to *Pepper* v. *Litton*, this Court said:

> "It was thus made plain that the theory relied upon as requiring disallowance or subordination of the contested claim rested upon grounds not previously adjudicated, and we explicitly noted that the state court did not adjudicate it."

Respondents respectfully submit that the same situation exists here. The question of non-ownership, non-possession and non-loss of the commercial gems was not raised in any of the Federal court proceedings prior to bankruptcy and was not adjudicated in any of those proceedings. And respondents earnestly submit that *Pepper* v. *Litton* is authority for the position that if such issues were not submitted to, not heard and not decided by the Federal courts in California, then the bankruptcy court in Oklahoma was not inhibited from inquiring into this phase of the matter and finding the facts with reference thereto. The Referee did this and the Circuit Court of Appeals remanded the case to the District Court for the same purpose. For findings of fact upon this vital issue in the case!

Pepper v. *Litton*, and the cases upon which it is based, is authority for the rule that the bankruptcy court, in the allowance or disallowance of claims invokes equitable powers "to the end that fraud will not prevail, that substance will not give way to form, that technical consideration will not prevent substantial justice from being done." But, here, most respectfully and sincerely respondents say that technical considerations are being used to permit this very thing, to permit fraud to prevail, to prevent substantial justice from being done. All in the name of a technical doctrine, the doctrine of *res judicata*. And here the application of the technical doctrine of *res judicata* is applied to the extent of saying that because the trustee stated in his notice of motion for permission to intervene in the California court, that the motion would be made upon the ground of "fraud in the entry of the judgment," which ground the Circuit Court of Appeals stated was not proved but apparently abandoned, the creditors of the bankrupt are now barred and estopped from asserting that the petitioner obtained his judgment by perjury, viz: that he claimed ownership of property and recovered judgment for the conversion of property he never owned, never possessed and never lost.

In *Pepper* v. *Litton*, the Court said:

> "And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties *or is founded upon no real debt*." (Italics ours). Citing *Chandler* v. *Thompson* (C.C.A. 7th), 120 Fed. 940 and other cases in Note 13, 84 L. ed. at 289.

In *Chandler* v. *Thompson*, the Court said:

"* * * A judgment not founded on an actual debt or other legal liability, due or enforceable at the time of its entry, will not be upheld against creditors of the judgment debtor. *Palmer* v. *Muchmell*, 43 N. J. Eq. 90, 10 Atl. 802."

In re Continental Enquiry Co.:

"(2) The claim was founded on a judgment rendered by default in the state court. The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings."

In re Thompson:

"What are the rights of creditors in a court of equity against another creditor, whose claim is tainted by fraud, actual or constructive, which judgment has been obtained thereon in a court of law?"

and the Court holds the judgment subject to attack "which fraudulently obtained."

It is most respectfully submitted that the distinguishing of *Pepper* v. *Litton* from the case at bar and the rule laid down in this case, as we understand it, that the rule of *Pepper* v. *Litton* only applies where a fiduciary relationship exists between the judgment creditor and debtor, will result in untold confusion in the administration of the Bankruptcy Act. Respondents respectfully urge that the cases cited on Page 14 of their brief all are authority for the rule herein contended for, the right and power of the bankruptcy court to inquire into a judgment underlying a claim in bankruptcy

for the purpose of determining whether the claim is meritorious and founded on a real debt.

> "A bankruptcy court has full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. And the mere fact that a claim has been reduced to judgment does not prevent such an inquiry. As the merger of the claim into a judgment does not change its nature so far as provability is concerned."
>
> *Pepper* v. *Litton*, citing *Boynton* v. *Ball*, 121 U.S. 457.

THE HEARING ON VALUES BEFORE THE CALIFORNIA DISTRICT COURT

This hearing took place before bankruptcy. Whatever transpired could not be binding upon respondents because they were not parties to that proceeding.

Headnote 7, Page 833, the Court says:

> "It is evident that an essential element of the claim of fraud is that the alleged converted minerals were worth substantially less than the $164,000 alleged to be their value in the complaint, for which the judgment was rendered. But before the bankruptcy this issue of value had been litigated between petitioner and the bankrupt in the District Court for Southern California."

This premise again overlooks the essential nature of the grounds upon which the Referee disallowed the claim, non-ownership, non-possession, non-loss, but let us look at the nature of this hearing for a moment. The order of June 9, 1939, on bankrupt's motion to set aside the default, before bankruptcy, provides:

> "Such hearing to be limited to ascertaining by the Judge of said court, from such evidence to be presented

by the said parties under the rules of evidence of said court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed as alleged in said complaint" (R., Vol. 1, Page 265).

This hearing proceeded upon this premise and assumed the ownership, possession and loss of the property described in the complaint. The only issue heard by the court was whether or not such property was worth the amount of the judgment. Samples of similar materials were brought into court. There was testimony that these materials were of a value consistent with those alleged in the complaint. Upon this basis, assuming the ownership, possession and loss of the property, the court let the judgment stand (R., Vol 2, Pages 1163-1164). There was no inquiry into the merits of the controversy as to ownership, possession and loss; that was precluded by the order of the court.

THE POWER OF THE BANKRUPTCY COURT TO SUBORDINATE CLAIMS

The power of the Bankruptcy Court to subordinate claims of a class so as to equitably distribute the assets of the estate, is complete. Here, assuming the legitimacy of petitioner's cause of action for damages, the judgment includes more than $113,000 interest, allowed from the date of the alleged conversion in 1929 to the date of judgment in 1939. The record shows that the first claim of petitioner of loss in connection with this transaction was his claim for

$30,000 filed in the *Golden State Bankruptcy case* in California in February, 1930. This claim was not heard until May, 1932, when it was disallowed. Shortly thereafter, petitioner filed his first case against bankrupt, June, 1932. This case was dismissed for want of prosecution in July, 1935. The second suit in which the judgment was rendered was filed shortly thereafter but summons was not served on bankrupt until January, 1939, nearly four years later. Thus a period of nearly ten years elapsed from the time of the alleged conversion until date of judgment. The record bespeaks laches and neglect on the part of petitioner in prosecuting his claim. The allowance of interest from the date of this judgment is open to serious question. But even if properly allowed, is the hand of the Bankruptcy Court tied by the judgment to grant relief to other creditors of the same class from the allowance of interest, by subordination, especially in view of petitioner's neglect and laches in the prosecution of his claim? Assuming that some of creditors' claims originated during this ten-year period; that they were for money loaned in good faith or other evidences of unquestioned debt—some unchallenged. Are they to be denied in part by petitioner's participation on an equal basis with them in the assets of this estate when petitioner comes with unclean hands and they come with clean hands? These considerations are in addition to the main consideration that the bankruptcy court found petitioner's claim was not founded upon merit and did not represent a real debt.

Since the Referee disallowed the claim in full he obviously did not consider the question of subordination. Is he now precluded from doing so? Respondents respectfully submit that the Bankruptcy Court should be permitted to review the evidence herein against petitioner's claim for the purpose of considering whether or not it should be subordinated to the claims of other like creditors, if for no other purpose, and that the following language in the concluding paragraph of the opinion should be modified so as to permit this to be done: "There is no equitable ground upon which his claim or the judgment upon it could be set aside or *subordinated* to those of other creditors," etc. (Italics ours).

CONCLUSION

Respondents most respectfully submit this petition for rehearing. They are willing that this case be sent back to the District Court for findings of fact upon all matters the Court deems material to enable it to properly dispose of this controversy. If this Court is of the opinion that petitioner should be given an opportunity to introduce evidence before the District Court or Referee in opposition to respondents' evidence and claim, respondents have no objections. They want no technical advantage by reason of the fact that petitioner has stood upon his objections to the jurisdiction of the bankruptcy court to hear respondents; they are willing for him to have his full day in court. Under the judgment of this Court, as it now stands, respondents humbly say that

petitioner is permitted to realize upon a judgment obtained by perjured testimony, which is without merit, does not represent a real debt and is unconscionable.

In *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 238, this Court said:

> "Out of deference to the deep-rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. * * * But where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable' * * * they have wielded the power without hesitation. * * * whatever the form the relief has taken in particular cases, the net result in every case has been the same; where the situation has required the court has, in some manner, devitalized the judgment. * * *
>
> "* * * this equitable procedure has always been characterized by flexibility which enables it to meet new situations * * * and to accord all the relief necessary to correct the particular injustices involved in these situations."

Respondents pray the exercise of this power in this case by this Court, if such be necessary, to the end that "fraud will not prevail, that substance will not give way to form, that technical consideration will not prevent substantial justice from being done."

Respondents further say that the question of subordination was not considered nor decided by the Bankruptcy Court and that even if the judgment of the Circuit Court of Appeals herein is reversed this cause should be left open for consideration by the Bankruptcy Court of the question of subordination. In order that there may be no question about

the right of the Bankruptcy Court to do this, respondents ask that the last paragraph of the judgment of this Court be corrected so as to eliminate therefrom any reference to the question of subordination and particularly the following language: "or subordinated to those of other creditors in the bankruptcy proceedings."

Respectfully submitted,

THOS. W. CHAMPION,
LOUIS A. FISCHL,
H. A. LEDBETTER,
Ardmore, Oklahoma;
Counsel for Respondents.

MAY, 1946.

CERTIFICATE OF COUNSEL

Counsel for respondents most respectfully submit that this Petition for Rehearing is filed in good faith and not for delay.

LOUIS A. FISCHL,
Of Counsel for Respondents.

May 20, 1946.

SUPREME COURT OF THE UNITED STATES.

No. 496.—October Term, 1945.

M. E. Heiser, Petitioner,
vs.
Willie Mae Woodruff, Howard L. Woodruff, Marguerite B. Woodruff, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 22, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a proceeding in bankruptcy on objections to the allowance of petitioner's claim in bankruptcy based upon a money judgment acquired against the bankrupt before the bankruptcy. Respondents objected to allowance of the claim on the ground that, so far as here relevant, the judgment was procured by fraud, that is, by perjured allegations in the complaint in the suit in which the judgment was rendered, and by perjured testimony as to the value of property alleged to have been converted by the defendant.

The referee in bankruptcy disallowed the claim. On the referee's certificate the district court, sitting in bankruptcy, allowed the claim, sustaining petitioner's contention that the issue of fraud in procurement of the judgment had been previously litigated and decided in petitioner's favor in proceedings in which the petitioner and the bankrupt or his trustee, or both, had been parties, and was therefore *res judicata*.

The Court of Appeals for the Tenth Circuit reversed. 150 F. 2d 869. Relying upon our decisions in *Pepper* v. *Litton*, 308 U. S. 295, and *Prudence Realization Corp.* v. *Geist*, 316 U. S. 89, it held that the court of bankruptcy could go behind the prior adjudications of the validity of the judgment and decide for itself the questio s previously litigated and decided, whether the cause of action on which the judgment was entered was meritorious, and whether the claim in bankruptcy should be rejected because based on a judgment procured by claimant's fraud. The Court of Appeals accordingly remanded the cause to the district court for further proceedings on the objections to allowance of the claim. We granted certiorari, —— U. S. ——, upon a petition which raises the questions whether the bankruptcy court may re-adjudi-

cate the merits of a cause of action on which a judgment against the bankrupt, proved as a claim in bankruptcy, was entered and may disregard a previous adjudication between the parties that the judgment was not procured by fraud.

Woodruff, the bankrupt, was adjudicated as such on his voluntary petition on July 5, 1939. Petitioner, proceeding under § 63(a)(1) of the Bankruptcy Act, 11 U. S. C. 103(a), which provides that a fixed liability, evidenced by a judgment, is a provable claim in bankruptcy, filed his proof of claim in the bankruptcy court upon a default judgment against Woodruff for the sum, including accrued interest and costs, of more than $278,000. The suit in which the judgment was procured was filed in the United States District Court for the Southern District of California in July, 1935. Judgment was entered for petitioner on March 20, 1939, on proof taken of service of summons on January 31, 1939, and of Woodward's default and on evidence given by the petitioner.

The suit was based on diversity of citizenship, and the cause of action alleged was in substance that Woodruff had procured property of petitioner, consisting of rough sapphires, opals and zircons, of a stated value of $164,000, by false pretenses and false representations, the details of which are not now material, and had thereafter converted them to his own use.

On March 29, 1939, shortly after the judgment was rendered, Woodruff filed a motion in the trial court to set it aside. The motion, so far as it was based upon the alleged failure to serve the defendant Woodruff with process, was denied on June 8, 1939. But the court, on stipulation of the parties, directed that a hearing be held to determine the value of the converted gems and provided that at the hearing "such competent evidence as either party desires to present be received" and considered by the court "in determining the actual value of the property" which the plaintiff alleged was converted by defendants. The Court's order further provided that the judgment should be reduced in the amount by which the adjudged value of the gems exceeded the actual value as found at the hearing. After a contested hearing at which evidence, oral and documentary, was received, the trial court made a minute order stating that the court found that the values of the converted property were those alleged in the complaint, and declined to give further consideration to the motion to set aside the judgment. No appeal was taken from the judg-

ment, and no review was had of the minute order or of the denial of the motion to set the judgment aside.

On August 23, 1939, on application of Jackson, the trustee of the bankrupt's estate, which certain creditors supported, the referee in bankruptcy authorized and directed the trustee "to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to avoid" the judgment, and authorized him to retain counsel in the Southern District of California for that purpose. This was followed by a motion on behalf of the bankrupt's trustee, and the bankrupt, in the district court for that district, to set aside the judgment on the grounds, among others, that no proper service of process had been made on the defendant, that the complaint did not state a cause of action, that "a fraud was practiced upon the above entitled court with respect to the entry of said judgment", and that the trustee and the bankrupt "have been prevented from presenting said defense upon any trial of the merits by reason of fraud, accident, surprise and excusable neglect as is more particularly shown by the affidavits" upon which the motion was made. The affidavit of the trustee in support of the motion stated that the judgment was "based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors and your affiant, as representative of said creditors". Counter affidavits by petitioner and his attorney in the suit in which the judgment was rendered denied the allegations of fraud.

The district court denied the motion, and the Court of Appeals for the Ninth Circuit affirmed. 111 F. 2d 310. It overruled all the alleged grounds for setting aside the judgment, holding that the service of process was valid and that in any case the defendant had appeared in the suit by entering into the stipulation for trial of the issue of value of the property alleged to have been converted, and participating in the hearing on that issue. It also held that the charge of fraud was denied and unsupported by proof, adding "that ground of appellants' motion appears to have been abandoned." There was no review of this decision.

The court below, in rejecting petitioner's plea of *res judicata*, and in directing inquiry into the merits of the original cause of action and into the allegation of fraud in procurement of the judgment, rested its decision upon the ground that the bankrupt's trustee had failed to place before the California district court any contention or proof that petitioner's testimony, particularly as to the value of the converted property, was perjured, that the

bankrupt was not indebted to petitioner, or that the allegations of the complaint were untrue. The court, relying on *Pepper* v. *Litton, supra,* also held that the bankruptcy court, being a court having equity powers, was not bound by the principles of *res judicata* as to issues which were not pressed before the California district court, and that the authority of the bankruptcy court as a court of equity included the power to inquire into the validity of the claim upon which the judgment, presented as a claim against the estate, was based.

We need not consider whether, apart from the requirements of the full faith and credit clause of the Constitution, the rule of *res judicata* applied in the federal courts, in diversity of citizenship cases, under the doctrine of *Erie* v. *Tompkins,* 304 U. S. 64; cf. *Guaranty Trust Co.* v. *York,* 326 U. S. 99; *Holmberg et al.* v. *Armbrecht,* No. 505, decided February 25, 1946, can be other than that of the state in which the federal court sits. For nothing decided in *Erie* v. *Tompkins, supra,* requires a court of bankruptcy, in applying the statutes of the United States governing the liquidation of bankrupts' estates, to adopt local rules of law in determining what claims are provable, or to be allowed, or how the bankrupt's estate is to be distributed among claimants. Cf. *Board of Comm'rs* v. *United States,* 308 U. S. 343; *Deitrick* v. *Greaney,* 309 U. S. 190; *D'Oench, Duhme & Co.* v. *F. D. I. C.,* 315 U. S. 447; *Helvering* v. *Stuart,* 317 U. S. 154, 161-2; *Sola Electric Co.* v. *Jefferson Co.,* 317 U. S. 173, 176; *Wragg* v. *Federal Land Bank,* 317 U. S. 325, 328; *Clearfield Trust Co.* v. *United States,* 318 U. S. 363. In passing upon and rejecting or allowing the proof of claim in this case the court of bankruptcy proceeds—not without appropriate regard for rights acquired under state law—under federal statutes which govern the proof and allowance of claims based on judgments. In determining what judgments are provable and what objections may be made to their proof, and in determining the extent to which the inequitable conduct of a claimant in acquiring or asserting his claim in bankruptcy, requires its rejection or its subordination to other claims which, in other respects are of the same class, the bankruptcy court is defining and applying federal, not state, law. See *Prudence Realization Corp.* v. *Geist, supra,* 95, 96 and cases cited; cf. *United States* v. *Pelzer,* 312 U. S. 399, 402-03.

It is true that a bankruptcy court is also a court of equity. *Local Loan Co.* v. *Hunt,* 292 U. S. 234, 240, and may exercise equity powers in bankrupty proceedings to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud

has not been previously adjudicated. *Pepper* v. *Litton*, *supra*, 306. In appropriate cases, acting upon equitable principles, it may also subordinate the claim of one creditor to those of others in order to prevent the consummation of a course of conduct by the claimant which, as to them, would be fraudulent or otherwise inequitable. *Taylor* v. *Standard Gas Co.*, 306 U. S. 307; *Pepper* v. *Litton*, *supra*; *Prudence Realization Corp.* v. *Geist*, *supra*; *American Surety Co.* v. *Sampsell*, No. 142, this term. But we are aware of no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata*, which is founded upon the generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and the contested issue is decided against him, he may not later renew the litigation in another court. *Baldwin* v. *Traveling Men's Ass'n*, 283 U. S. 522, 525-6.

Before *Erie* v. *Tompkins* it was recognized by this Court that, apart from the full faith and credit clause, a judgment duly rendered in one court will be recognized as *res judicata* in a suit between the same parties in a federal court. *Cromwell* v. *County of Sac*, 94 U. S. 351; *Case* v. *Beauregard*, 101 U. S. 688; *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316; *Grubb* v. *Public Utilities Comm'n*, 281 U. S. 470. See *Baldwin* v. *Traveling Men's Ass'n*, *supra*, and cases cited; cf. *Chicago, R. I. & P. Ry.* v. *Schendel*, 270 U. S. 611; *Milwaukee* v. *White*, 296 U. S. 268, 272-3. It has been held in non-diversity cases, since *Erie* v. *Tompkins*, that the federal courts will apply their own rule of *res judicata*. *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 403; *Jackson* v. *Irving Trust Co.*, 311 U. S. 494, 503. This Court has also required that effect be given in both state and federal courts to a plea of *res judicata* arising from decrees of a bankruptcy court. *Stoll* v. *Gottlieb*, 305 U. S. 165; *Chicot County Dist.* v. *Bank*, 308 U. S. 371. And it is well settled that where the trustee in bankruptcy unsuccessfully litigates an issue outside the bankruptcy court the decision against him is binding in the bankruptcy court. *Davis* v. *Friedlander*, 104 U. S. 570; *Fischer* v. *Pauline Oil Co.*, 309 U. S. 294, 302-03. At least to the extent that the issue of fraud raised by the objections to petitioner's claim as between petitioner and the bankrupt has been litigated and decided before the bankruptcy and has since been litigated between the petitioner and the trustee in bankruptcy, who represents the bankrupt and his creditors, that issue is now *res judicata* and may not further be litigated in the bankruptcy proceeding. Hence we turn to the question, what issues

essential to the allegations that the judgment was procured by fraud have been so litigated.

Examination of the record in this proceeding, including the objections filed to petitioner's claim, the applications of the bankrupt, the trustee, and the creditors, for authority to attack the judgment in the district court of Southern California, and the proceedings instituted in that court for that purpose, make plain the nature of the fraud charged against petitioner. Shortly stated it is that in the course of transactions with petitioner the bankrupt acquired possession of and converted to his own use a quantity of worthless minerals, owned or previously owned or possessed by petitioner, who, by means of perjured allegations in the complaint and perjured testimony as to their amount and value, procured a default judgment against the bankrupt for an amount in excess of their value.

It is evident that an essential element of the claim of fraud is that the alleged converted minerals were worth substantially less than the $164,000 alleged to be their value in the complaint, for which the judgment was rendered. But before the bankruptcy this issue of value had been litigated between petitioner and the bankrupt in the District Court for Southern California. In the course of the proceedings had on the bankrupt's motion to set aside the judgment, the district court decided the issue against the bankrupt and declined to disturb the judgment. No appeal was taken from the judgment and consequently there was no review of the denial of the bankrupt's motion to set aside or modify the judgment, or of the court's minute order finding that the converted gems were of the value alleged in the complaint.

The same issue as to value and also the issue whether there was perjured testimony of value were raised in the proceeding later brought in the district court for Southern California by the trustee in behalf of the bankrupt to set aside the judgment. In his application to the bankruptcy court to direct the trustee to bring the proceeding, the bankrupt had represented that "the material allegations of the complaint filed in said case [in the District Court for Southern California] are untrue"; that "the raw gems described in the plaintiff's complaint were at no time of the value of $164,000 or any comparable value." As already noted the papers on the motion in behalf of the trustee and the bankrupt to vacate the judgment, set up that the judgment was based on "fictitious values" and was fraudulently procured. In

that proceeding the charge of fraud thus alleged was put in issue by the answering affidavits. The denial of the motion by the district court was affirmed by the Court of Appeals for the Ninth Circuit on the ground that the applicants had not sustained their allegations of fictitious value and fraud by any tender of evidence or other proof. This was a final judgment on the issues thus raised, binding on the parties to the proceeding. It is not any the less so, as the Court of Appeals thought, because the moving parties failed to support their allegations by evidence.

In general a judgment is *res judicata* not only to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit. *Cromwell* v. *County of Sac*, *supra*, 352; *Grubb* v. *Public Utilities Comm'n*, *supra*, 479; *Chicot County Dist.* v. *Bank*, *supra*, 375. But here the alleged fraud was put in issue and the issue was decided against the trustee, the bankrupt and those whom they represent or who claim under them, for failure of proof. After two proceedings, in one of which the bankrupt and in the other of which the bankrupt and his trustee, sought, and were free, to prove that the judgment was based on fraudulently alleged, fictitious values, and in both of which the decision was against them, the principles of *res judicata* preclude the revival of the litigation in the bankruptcy court.

Pepper v. *Litton*, *supra*, lends no support to a different view. Undoubtedly, since the bankruptcy act authorizes a proof of claim based on a judgment, such a proof may be assailed in the bankruptcy court on the ground that the purported judgment is not a judgment because of want of jurisdiction of the court which rendered it over the persons of the parties or the subject matter of the suit, or because it was procured by fraud of a party. *Pepper* v. *Litton*, *supra*, 306; *Chandler* v. *Thompson*, 120 Fed. 940; *In re Continental Engine Co.*, 234 Fed. 58; *In re Stucky Trucking & Rigging Co.*, 243 Fed. 287; *In re Rubin*, 24 F. 2d 289. But it is quite another matter to say that the bankruptcy court may reexamine the issues determined by the judgment itself. It has, from an early date, been held to the contrary. *McKinsey* v. *Harding*, Fed. Cas. No. 8,866; *Ex parte O'Neil*, Fed. Cas. No. 10,527; *In re Ulfelder Co.*, 98 Fed. 409; *Peters* v. *United States*, 177 Fed. 885; *Handlan* v. *Walker*, 200 Fed. 566; *In re Ganet Realty Corp.*, 83 F. 2d 945; *Lyders* v. *Peterson*, 88 F. 2d 9. Nor can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of

fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered, or their representatives. *Pepper* v. *Litton, supra,* 306, n. 13; cf. *Mays* v. *Fritton,* 20 Wall. 414; *Jerome* v. *McCarter,* 94 U. S. 734, 737; *McHenry* v. *La Société Francaise,* 95 U. S. 58; *Davis* v. *Friedlander, supra*; *Winchester* v. *Heiskell,* 119 U. S. 450, 453; *Grant* v. *Buckner,* 172 U. S. 232, 238.

Neither *Pepper* v. *Litton, supra,* on which respondents chiefly rely, nor the other cases which they cite, sustain the contention that the bankruptcy court, in passing on the validity of creditors' claims, may disregard the principle of *res judicata.* In that case the judgment creditor sought by proof of claim on his judgment to share in the assets of the bankrupt estate, which were insufficient to satisfy the rival claim of another judgment creditor. We assumed, for purposes of decision, that the claim on which the disputed judgment was based was founded on a valid debt. But the court held that as the judgment creditor was also a controlling stockholder of the bankrupt corporation he was a fiduciary for the other creditors of the corporation and, as such, could not prove his claim in competition with other creditors or gain from the estate any personal advantage, security, or priority over them. After referring to certain cases in which creditors' claims had been disallowed and saying: "These cases do not turn on the existence or nonexistence of the debt. Rather they involve simply the question of order of payment," 308 U. S. 310, the Court concluded: "Where there is a violation of those principles, equity will undo the wrong or intervene to prevent its consummation. . . . On such a test the action of the District Court in disallowing or subordinating Litton's claim was clearly correct." 308 U. S. 311. Cf. *Taylor* v. *Standard Gas & Electric Co., supra.*

Although the trustee in bankruptcy in *Pepper* v. *Litton* had unsuccessfully attacked the judgment in another proceeding in the state courts, this Court pointed out that in that proceeding no question was presented "whether or not the . . . judgment might be subordinated to the claims of other creditors upon equitable principles," 308 U. S. 302-03, and that "the only decree which was asked or could be given in the plaintiff's favor under the pleadings was for cancellation of the judgment as a record obligation of the bankrupt." 308 U. S. 303. It was thus made plain that the theory relied upon as requiring disallowance or subordination of the contested claim rested upon grounds not

previously adjudicated, and we explicitly noted that the state court did not adjudicate it. 308 U. S. 302-03.*

Here when the petitioner brought his suit for conversion he was not a fiduciary for the defendant, Woodruff, or his creditors. There was no equitable ground upon which his claim or the judgment upon it could be set aside or subordinated to those of other creditors in the bankruptcy proceeding, except that asserted by

* In Pepper *v.* Litton, 308 U. S. 295, the Court found that Litton, a "dominant and controlling" stockholder of the bankrupt corporation entered into a "planned and fraudulent scheme" which was "plainly for the sole purpose of avoiding payment of the Pepper debt", which was then owed by the corporation. The fraudulent scheme, which was initiated shortly before the bankruptcy, involved several successive steps, as follows: Litton procured a judgment in his favor against the corporation, upon an alleged fictitious claim for salary, which was entered on confession in its behalf by one of its officers, who was also an employee of Litton and subservient to his will. A second judgment having been entered against the corporation upon the debt to Pepper, and, execution upon the Pepper judgment having been stayed pending an appeal by the corporation, Litton then became the purchaser of certain property of the corporation on execution sale under his judgment, and transferred the property to a newly organized corporation in exchange for all its stock. He then caused the judgment debtor to be adjudged a bankrupt on its voluntary petition and filed in the bankruptcy proceeding proof of claim upon the confessed judgment.

In the meantime Pepper had brought suit in the Virginia state courts to have the Litton judgment set aside as void. Following the sale of the corporation's property under the Litton execution, the sheriff instituted an interpleader suit joining Litton and Pepper as claimants to the proceeds of the execution sale in the sheriff's hands. Litton and Pepper both answered, asserting claims to the proceeds subject to an existing prior lien. Thereafter the trustee in bankruptcy, with the authority of the bankruptcy court, moved in the state court to set aside the Litton judgment and to quash the execution on the ground that the judgment was void, since the confession did not conform to the Virginia statutes. That court concluded that the Litton judgment was void, but denied the motion on the ground that the trustee was estopped to challenge it.

It held that Pepper, in asserting a claim to the proceeds of the sheriff's sale in the interpleader suit, had treated them as validly derived from the execution sale on the Litton judgment, and that in consequence he had elected to recognize the validity of the judgment. As at that time Litton had acquired or caused to be withdrawn from the bankruptcy proceedings all the claims against the estate, other than the Pepper judgment, the court held that the trustee was representing only Pepper in the state court suit and that the trustee, as well as Pepper, was estopped to maintain it. The judgment was affirmed on these grounds by the Virginia Supreme Court. Smith *v.* Litton, 167 Va. 263. On objections to the claim on the Litton judgment the district court, sitting in bankruptcy, disallowed the claim. On appeal the Circuit Court of Appeals reversed, holding that the decision and judgment of the state court in Smith *v.* Litton, *supra*, were *res judicata* in the bankruptcy proceeding. 100 F. 2d 830.

This Court, in reversing the judgment of the Court of Appeals, pointed out that the challenge to the validity of the Litton judgment in the state court was on the ground that the judgment was irregular or void on its face because the confession of judgment did not conform to the requirements of state law. We also pointed out that under the pleadings and practice in the suit attacking the judgment the validity of the alleged debt for salary was not in issue and no question was in issue or presented whether the Litton judgment might, on equitable principles, be subordinated to the claims of other creditors. We said, page 303: "The only decree which was asked or

respondents that the judgment had been procured by a fraud perpetrated on the judgment debtor. That issue, having been twice litigated and decided in the court in which the judgment was rendered, in proceedings brought by the trustee in bankruptcy and the bankrupt, and by the bankrupt alone, may not now be relitigated in the bankruptcy court.

Reversed.

Mr. Justice BLACK and Mr. Justice DOUGLAS dissenting.

We would affirm the judgment for the reasons stated by Judge Bratton writing for the Circuit Court of Appeals. 150 F. 2d 869.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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could be given in the plaintiff's favor under the pleadings was for cancellation of the judgment as a record obligation of the bankrupt. It is therefore plain that the issue which the bankruptcy court later considered was not an issue in the trial of the cause in the state court and could not be adjudicated there."

Thus the Court recognized that the judgment of the state court in Smith v. Litton, *supra*, was not *res judicata* as to matters later ruled upon by the bankruptcy court and by this Court. Upon this assumption, and assuming also the validity of the alleged salary debt underlying the Litton judgment, this Court held, on equitable principles, that Litton was not free to assert his judgment in competition with other creditors because he had acquired the judgment in breach of the fiduciary obligation which a controlling stockholder of the bankrupt owes to the other creditors, not to secure for himself a personal advantage by way of security or priority over them. Cf. Taylor v. Standard Gas & Electric Co., 306 U. S. 307.

The decision in Pepper v. Litton thus affords no support for petitioner's contention that the doctrine of *res judicata* is inapplicable in a bankruptcy proceeding. Cases on which respondents rely, cited in Pepper v. Litton, as illustrating the extent to which a court may look behind a judgment proved in bankruptcy to ascertain the nature of a claim upon which the judgment is based, are concerned exclusively with the question of the nature of the liability represented by the judgment, that is, whether it represents a "debt" provable and dischargeable in bankruptcy under §§ 17 and 63 of the Bankruptcy Act. Thus a decree for alimony was held to be not a "debt" but in the nature of a penalty for failure to perform a duty, and not provable or dischargeable in bankruptcy. Wetmore v. Markoe, 196 U. S. 68. Those cases do not support the ruling of the Court of Appeals below that the bankruptcy court, in determining the validity of a provable claim upon a judgment, may reexamine the issues which were litigated by the bankrupt or his trustee in the suit in which the judgment was rendered or in any other. See Boynton v. Ball, 121 U. S. 457.

SUPREME COURT OF THE UNITED STATES.

No. 496.—October Term, 1945.

M. E. Heiser, Petitioner,
vs.
Willie Mae Woodruff, Howard L. Woodruff, Marguerite B. Woodruff, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 22, 1946.]

Mr. Justice Rutledge.

I concur in the result. In my judgment it is necessary, in this case, to do no more than to rule that equitable principles, applicable in bankruptcy in accordance with *Pepper* v. *Litton*, 308 U. S. 295, and prior decisions, do not require reexamination by the bankruptcy court, in the circumstances now presented, of the foundations of the judgment which is the basis of the claim in issue. If, as the Court declared in *Pepper* v. *Litton*, the bankruptcy court has power to reject claims, even when previously allowed, "in whole or in part 'according to the equities of the case,' " 308 U. S. at 304,[1] see 11 U. S. C. § 93(k), I find no reason for qualifying that rule in this case. It necessarily comprehends that the bankruptcy court in the allowance or rejection and ordering of claims

[1] "Allowance and disallowance are judicial acts. . . . In passing on an allowance of claims the court sits as a court of equity, which gives it far-reaching powers 'to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate.' [Pepper v. Litton, 308 U. S. 295, 308.] Mere reasons of equity may sometimes require that a creditor's claim be either totally disallowed, or subordinated to the claims of all or of certain other general creditors. . . . Equities to be weighed in connection with the allowance of a claim may vary in importance. They may in extreme cases be strong enough to warrant disallowance absolutely and entirely. In other cases equity may be satisfied with a mere 'subordination' or postponement of a claim, and its relegation to a rank inferior to that of all general creditors or of a particular group." 3 Collier, Bankruptcy (14th ed.) 185-186. See also 3 *id.* at 1800-1801.

11 U. S. C. § 93(a) provides: "A proof of claim shall consist of a statement under oath, in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what payments have been made thereon; and that the claim is *justly owing* from the bankrupt to the creditor." (Emphasis added.)

shall not be bound by any broad or rigid rule of *res judicata*. That, I think, is the essential ruling of the *Pepper* case.[2]

On the other hand, prior adjudication of the very grounds alleged for disallowing or subordinating a judgment claim, cannot be irrelevant to what equitable principles may require the bankruptcy court to do in disposing of the claim. And the same may be true also of prior failure to secure such an adjudication when adequate opportunity is afforded by proceedings instituted to set aside or modify the judgment. Cf. *Handlan* v. *Walker*, 200 Fed. 566. Sound policies of judicial administration, affecting both the bankruptcy court and the court rendering the judgment, may have a similar bearing.

In this case the two separate proceedings had in the District Court for the Southern District of California afforded perhaps more than adequate opportunity for adjudication of the issues now raised in the bankruptcy court, once to the bankrupt, once to his trustee. These proceedings were allowed to be terminated adversely in the one case without appeal, in the other after adverse decision on appeal and without application for certiorari. *Jackson* v. *Heiser*, 111 F. 2d 310. I do not think equity requires a third opportunity to be afforded by the bankruptcy court. On this ground I agree that the judgment should be reversed.

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2 The case has been so read. Citing it, 3 Collier, Bankruptcy (14th ed.) 1800, says: "The doctrine of *res judicata*, as applied to the bankruptcy court in deciding whether a claim should be allowed, disallowed or subordinated, is subject to the paramount equitable powers of bankruptcy courts to prevent the perpetration of fraud and collusion."